United States Court of Appeals

for the Second Circuit

APPENDIX

Nos. 74-1584, 74-1636

In the

United States Court of Appeals

For the Second Circuit

SCIENTIFIC HOLDING COMPANY, LTD, AN ILLINOIS CORPORATION,

Plaintiff-Appellant,

vs.

PLESSEY INCORPORATED, A DELAWARE CORPORATION,

Defendant-Appellee.

APPENDIX.
Volume I (Pages 1-416)

FRANCIS J. MCCONNELL,
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Chicago, Illinois 60603,

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New York, New York 10017,
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Gunthorp-Warren Printing Company, Chicago • 346-1717

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CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BONSAL

Jury demand date:
by pltff. 9-21-72

72 CIV. 4

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation vs EVESSEY INCORPORATED, a Delaware corporation	For plaintiff: SILBERFELD, DEUZIGER & BANGSER 230 Park Ave. 10017 889-8400 For defendant: (Name changed to) ROVALL, KOEGEL & JULIE Rogers & Wells 200 Park Ave. 10017 972-7

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
6 mailed x	Clerk		9-21-72		15	
						15
mailed ✓	Marshal					
of Action:	Docket fee				5	
ch of Contract						5
60,000.00	Witness fees				5	
						5
ion arose at:	Depositions				5	
						5

SCIENTIFIC HOLDING CO.,LTD., VS PLESSEY INCORPORATED

JUDGE BONSAL 72 CIV. 4046

DATE	PROCEEDINGS	Date Order Judgment No
Sep.21-72	Filed complaint and issued summons	
ep.21-72	Filed pltff's First Request to Produce Documents	
ct.5-72	Filed pltff's First Request to Produce Documents with marshal's proof of service. (True Copy)	
Oct.5-72	Filed summons with marshal's ret. Served. Plessey Inc. by Seth Dubin,on 9-25-72	
ct.17-72	Filed pltff's notice to take deposition of Warren J. Sinsheimer,on 11-15-72, and other persons as indicated.	
ct.17-72	Filed pltff's notice to take deposition of William Tucker, on 10-26-72	
ct.17-72	Filed pltff's notice to take deposition of Warren J. Sinsheimer, on 11-15-72 with affdvt. of mailing to deft.	
ct.17-72	Filed pltff's Affdvt. of mailing, to Sinsheimer,on 10-9-72	
ct.17-72	Filed stipulation and order extending deft's.time to answer complaint to 11/16/72. So ordered. Bonsal, J.	
ov.10-72	Filed stip. and order that the time for deft. to answer pltff's notice to produce documents is extended from 11-9-72 to 11-21-72 Bonsal,J.	
Nov.20-72	Filed stip. and order that the time for deft. to answer complaint is ext. from 11-16-72 to 11-24-72. Bonsal,J.	
ov.28-72	Filed deft's Response to Request to Produce	
Nov.30-72	Filed ANSWER by deft. to complaint	RKEM
Dec.12-72	~~Filed Order that defts. have until 1/15/73 to renew their motion to dismiss for lack of venue, and pltf. allowed 2 weeks from that date to respond to defts'. motion. It is so ordered. Stewart, J.(mailed notice).~~ wrong dt	
ec 29.72	Filed Pltff's second request to produce documents.	
ec 29.72	Filed Pltff's response to dft's objection to pltff's First Document request.	
c 29.72	Filed Pltffs. Answer to counterclaims.	
b 1.73	Filed Deposition of William H. Tucker. dated 11/15/72. (M/N)	
n 29.73	Filed Dft. Notice of Oral Examination.	
n 29.73	Filed Dft. Request for production of documents.	
b 7.73	Filed Notice of Motion by pltff. Re: Produce Documents,etc. ret.2/20/73	
b 7.73	Filed Pltffs. Memorandum in support of motion.	
b 16.73	Filed Stip & Order that pltffs. motion now ret. 2/20/73 be adjourned to 3/12/73. So Ordered Bonsal J.	
ar 22.73	Filed Affidavit of James J. Maloney in opposition to pltff's motion to require dft. to produce certain documents.	
r 22.73	Filed Memorandum of Dft. Plessey Inc. in oppositon to pltffs motion for an order compelling production of documents.	
r.26.73	Filed ENDORSEMENT on motion oral argument request, Ordered that the report of the Magistrate is approved and adopted; and it is further ORDERED that pltf's motion for production of documents is granted to the extent that the information contained in the documents shall cover a period in the operation of defts. business up to but not beyond March 31, 1972; and it is further ORDERED that pltf. motion for the payment of its reasonable expenses incurred in connection with this motion is denied. So Ordered. BONSAL, J. (n/m)	
pr.26,73	Filed Affdvt. of Robert M.Blum.	
pr.26,73	Filed pltf. reply memo in support of motion Re: examine documents of deft.	
ul 16-73	Filed Deft 's Notice of Motion before Judge Dudley B.Bonsal ret.7/23/73,9:30 A.M. re:order attaching any and all assets of pltff presently in its possession or control; for an order restraining and enjoining pltff preliminarily from paying distributing or otherwise disbursing any assets presently in its possession or control until conclusion of this action.	
ul 16-73	Filed Deft's Affdvt of Milton H.Albert.	
l 16-73	Filed Deft's Memorandum of Law in support of Motion made for an Order of Attachment(Cont'd)	

DATE	FILINGS—PROCEEDINGS	AMOUNT RECEIVED IN ENDORSEMENT RETURNS	
Jul.16-73	(Cont'd) and in the alternative an Order restraining pltff preliminarily from distributing assets.		
Jul.20-73	File Pltff's Memorandum of Law submitted in opposition to Deft's Motion for an order of attachment or, in the alternative for a Preliminary Injunction.		
Jul.20-73	Filed Deft's Memorandum of Law submitted in support of Deft's Motion made for an order of attachment and in the alternative an order restraining pltff preliminarily from distributing assets.pg-1-2.		
Jul.20-73	Filed Deft's Reply affdvt by James J.Maloney.		
Jul.20-73	Filed pltff's affdvt in opposition to motion by Francis J. McConnell.		
Jul.23-73	Filed MEMO-END. on motion dtd 7-16-73.Motion disposed of in accordance with instruction given at argument.Parties to submit stipulation which will be so ordered.Bonsal,J.(mn)		
Aug.6-73	Filed Stip & Order that pltff shall not pay,distribute or otherwise disburse any assets presently in its possession, etc. as indicated. Bonsal,J.		
Aug.29-73	Filed Pltff's First Interrogs to Deft.		
Sep.13-73	Filed Deft's Interrogs.		
Sep.21-73	Filed Affdvt & Notice of Motion for protective order with respect to interrogs served by deft upon pltff, etc., ret.10/1/73,9:30 A.M.		
Sep.21-73	File pltff's Memorandum in support of Motion for protective order.		
Sep.27-73	Filed Stip & Order extending time for Deft to serve written response etc to pltff's first interrogs to 10/10/73.Bonsal,J.		
Sep.28-73	Filed deft's memorandum in opposition to motion for a protective order.		
Sep.28-73	Filed affidavit of W.P.Koegel in opposition to motion for a protective order.		
Sep.28-73	Filed affidavit of J.J.Maloney in opposition to motion for a protective order.		
Oct.16-73	Filed stip & order that time of deft. to respond to pltff's first interrogs is ext. to 10-31-73. Bonsal,J.		
Oct.25-73	Filed deft's Affdvt & notice of motion for enlargement of time. ret.10-29-73.		

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Cont'd on Page 4.

DATE	FILINGS—PROCEEDINGS
ct.30-73	Filed affidavit of R.M.Blum in opposition to deft's motion.
v.2-73	Filed stip & Order that time which deft. must respond to pltff's first interrogs is ext. from 10-31-73 to 11-14-73. So ordered. Bonsal,J.
v.5-73	Filed Memo-Endorsed on deft's motion filed 10-25-73 Re: Discovery: Parties given until 12-15-73 to complete discovery. So ordered. Bonsal,J.
.6-73	Filed deft's atty's notice to change of firm name.
.14-73	Filed deft's first supplementary interrogs.
.16-73	Filed stip & order deft's must serve written response to pltffs interrogs is ext. from 11-14-73 to 11-21-73.So ordered,Bonsal,J.
.26-73	Filed deft's partial answer to pltff's first interrogs.
.26-73	Filed deft's " " " " " "
.28-73	Filed pltff's answers to deft's first supplementary interrogs.
. 7-73	Filed consent & pre-trial order. So ordered. Bonsal,J.
.11-74	Filed deposition of deft. taken on 11-29-72. m/n
.11-74	Filed deposition of deft. taken on 11-30-72. "
.11-74	Filed deposition of Milton H. Albert, a witness taken by pltff. on 2-6-73. m/n
. 4-74	Filed deft's trial memorandum.
. 6-74	Filed deposition of Raymond N.Carlen taken on 7-17-73. m/n
. 6-74	Filed deposition of Pltff. taken on 3-1-73 by deft. "
. 6-74	Filed Continued deposition of pltff on 4-11-73.
r.5-74	Filed Deft's Requests to charge .
12/74	Filed deposition of Julius Lewis dtd 7/17/73. mn
.7-74	Before Bonsal,J. Jury trial begun.
.8-74	Trial continued
.11-74	" "
.12-74	" "
.13-74	" "
.14-74	" "
.15-74	" "
.18-74	" "
.19-74	" "
.20-74	" "
.21-74	" "
r.25-74	" "

Cont'd on page #5

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DATE	PROCEEDINGS
	Continued from page #4
Mar.26-74	Trial continued.
Mar.27-74	Trial continued & concluded. Jury verdict for deft.
Mar.29-74	Filed Judgment: Ordered that that pltff. have judgment against the deft. Plessey dismissing the counterclaims. Bonsal,J. Judgment Ent. Clerk. m/n Ent.3-29-74. Deft. Plessey have judgment against pltff. dismissing the complaint.
Apr.23-74	Filed pltff's notice of appeal to the U.S.C.A. from the order, directing a verdict on & withdrawing from the jury the issue of the validity. Mailed copy to Rogers & Wells.
Apr.25-74	Filed pltff's objections to proposed bill of costs.
Apr.23-74	Filed Bill of costs Docket as Judgment #74,379 in the sum of $3,481.40.
Apr.29-74	Filed deft's affidavit & notice of motion Re: modification &, refusing to tax certain costs herein ret.5-13-74.
Apr.29-74	Filed deft's memorandum of law in support of his motion ret., 5-13-74.
Mar.3-74	Filed deft's notice of cross-Appeal to the U.S.C.A. from final judgment entered. on 3-29-74. Mailed copy to Silberfeld, Danziger & Bangser.
May.14-74	Filed pltff's affidavit & notice of motion Re: taxation of costs ret.5-20-74.
May.14-74	Filed pltff's memorandum of law in support of his motion ret, 5-20-74.
May.14-74	Filed affidavit of F.J. McConnell in support of pltff's motion ret.5-20-74.
May.13-74	Filed stip & order that deft's motion for review be adj. to, May.28-74. So ordered. Bonsal,J.
May.20-74	Filed Stip. adj. motion pursuant to rule 54(b) from May 20,74 until May 28, 74. So Ordered Bonsal,J.
May.20,74	Filed Deft's Second Supple. Pre-Trial Memo.
May.20,74	Filed Deft's Pre-trial Memo. of D Plessey INC.
May.20,74	Filed Pltff's First Supple. Pre-Trial Memo.
May.20,74	Filed Memo in support of Motion . Upon Reference to the Master.
May.20,74	Filed Pltff's Pretrial Memo.
May.20,74	Filed Pltff's answers to Deft's interrogs. dated Sept. 10-73
May.20,73	Filed Response to Pltff's second request to produce.
May.13,74	Filed Stip. extending time from 3-12-73 to 3-20-73. So Ordered Bonsal, J.
May.30-74	Filed deft's memorandum of law in opposition to pltff's cross motion Re: Costs.
May.30-74	Filed affidavit of J.B.Koegel in opposition to pltff's cross motion Re: Costs.
May.28-74	Filed stip & order that deft's & pltff's motion Re: costs be adj. from 5 28-74 to 6-3-74. Bonsal,J.
June.4-74	Filed Memo-Endorsed on pltff's motion filed 5-14-74 Re: taxation of costs. Motion denied after argument. Settle order on notice. Bonsal,J.
June.4-74	Filed memo-endorsed on deft's motion filed 4-29-74 Re: costs. Motion denied after argument. Settle order on notice. Bonsal,J. m/n
	Transcript of record of proceedings, dated 3/7/74
	Transcript of record of proceedings, dated 3/7, 6, 11, 12, 14/74
	Transcript of record of proceedings, dated 3/5, 12, 19/74
	Supplemental transcript of proceedings, dated 3/21, 25 26/74

DATE	PROCEEDINGS
May.29-74	Filed notice that record on appeal has been certified & transmitted to the U.S. court of appeals on this 29th day of May,1974.
Jun.5-74	Filed pltff's memorandum in support of pltff's proposed order.
Jun.10-74	Filed affidavit of John B. Koegel in support of deft's proposed order.
Jun.10-74	Filed Order that deft's motion & pltff's cross-motion in connection with the taxation of costs by the clerk of this court be & they are denied. Ordered that the stipulation of the parties which was "So Ordered" by the court on 8-6-73 it hereby is continued in full force & effect, until the conclusion of this action. Pollak,J. m/n
11-74	Filed notice that 1st supplemental record on appeal has been transmitted to the U.S.C. of appeals on this 11th day of
2/74	Filed pltff.'s notice of appeal from order of the district court entered 6/10/74 denying pltff's motion for the disallowance of costs as taxed by the Clerk of this court. mailed copies to Silbergeld,Danziger & Pangser
20-74	Filed notice that supplemental record on appeal has been transmitted to the U.S.C.A. this 20th. day of June
10-74	Filed deft's notice of cross-appeal from order entered 6/10/74. copy to Silberfeld,Danziger & Pangser.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation, Plaintiff,	)	CIVIL ACTION
v.	)	No._____
PLESSEY INCORPORATED, a Delaware corporation, Defendant.	)	JURY DEMANDED

COMPLAINT

COUNT I

Plaintiff, SCIENTIFIC HOLDING COMPANY, LTD., by its attorneys, complaining of defendant, PLESSEY INCORPORATED for cause says:

JURISDICTION AND VENUE

1. Plaintiff SCIENTIFIC HOLDING COMPANY, LTD., (SHC) is an Illinois corporation with its principal place of business at Chicago, Illinois. SHC is the successor corporation to the assets and liabilities of SCIENTIFIC HOLDING COMPANY, LTD., formerly INTERNATIONAL SCIENTIFIC, LTD., (ISL), a corporation organized under the laws of Barbados, West Indies and since dissolved. ISL was formed in 1966 by a group of United States citizens and was engaged in the manufacture, assembly and sale of electro-mechanical, electronic sub-assemblies, and memory core planes, stacks, systems, and related equipment for use in computer and peripheral equipment. Its manufacturing facility was located in Barbados. In 1970 the business and assets were sold to U. S. PLESSEY.

2. Defendant PLESSEY INCORPORATED (U. S. PLESSEY) is a Delaware corporation with its principal place of business at 767 Fifth Avenue, New York City, New York and is a wholly owned, controlled and dominated subsidiary of PLESSEY COMPANY LIMITED. PLESSEY COMPANY LIMITED (ENGLISH PLESSEY), is an alien corporation organized and existing under the laws of England. ENGLISH PLESSEY is a large electronics and metals conglomerate with world wide operations and combined annual sales in excess of $500,000,000. It conducts its business abroad and in the United States as a unified operation under one management through wholly owned, controlled and dominated subsidiaries, including U. S. PLESSEY, which subsidiaries are operated as mere divisions or instrumentalities of its own business.

3. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand ($10,000.00) dollars.

CLAIMS ALLEGED

4. On February 4, 1970 ISL and ENGLISH PLESSEY for good and valuable considerations, duly made and executed a written contract, a copy of which is annexed to the complaint herein as Exhibit "A", wherein ISL agreed to sell and convey all of ISL's then existing assets and business, including all of ISL's good will and its right to use of its name. The contract called for an initial down payment of $180,000, which was substantially less than the net asset value of the company, and a further additional sum not to exceed $1,260,000, which sum was to be based on earnings during the "measuring year." Pursuant to the provisions of Paragraph 16 of the contract U. S. PLESSEY, as assignee, was later substituted for ENGLISH PLESSEY as the party to the contract.

5. The contract provided (¶ 5d) for continued operation of the business during the measuring year (April 1, 1970 through March 31, 1971) by "present management of ISL" and that such management "shall have the maximum freedom to operate the business in a manner which will produce, in the judgment of such management, the maximum profit available." The contract further provided that notwithstanding the foregoing, if ISL profits commencing with the third calendar month of the measuring year (June, 1971) average less than $15,000 per month, "Plessey shall have the right to assume full management responsibility", but that in such event, however, "Plessey shall be obligated to continue the business of ISL during the measuring year in good faith."

6. Subsequently at the closing on March 2, 1970, without further or additional consideration and under threat of refusing to go forward or perform under the terms of the February 4, 1970 contract, PLESSEY coerced ISL's president to execute a purported modification of the February 4 agreement, whereby PLESSEY claimed the right to assume, and did illegally assume, the management responsibilities commencing with the second calendar month of the measuring year (May, 1970) in the event profits averaged less than $15,000 per month. Said purported modification was never approved or ratified by the Board of Directors of ISL.

7. ISL has duly performed all the conditions of the February 4 agreement required to be performed on its part.

8. ISL showed a net profit for the month of May, 1970 under the contract formula of approximately $6,000. On June 9, 1970, acting pursuant to the purported modification agreement PLESSEY notified ISL management that it was assuming "complete management control forthwith."

9. In consequence of its assumption of complete management control and under the terms and provisions of the February 4 agreement PLESSEY was under a fiduciary obligation to ISL to operate the business "in good faith," efficiently, competently and in a manner which would maximize profits during the measuring year.

10. PLESSEY breached the terms and provisions of the February 4 agreement and defaulted in the performance of the fiduciary duties and contractual obligations owed to ISL in each of the following respects:

(a) It prematurely assumed management control of the business of ISL pursuant to the invalid and unauthorized agreement of March 2, 1970;

(b) It replaced ISL's general manager and other key ISL personnel with inexperienced and inept personnel wholly unfamiliar with the business and operations of the corporation and similarly unfamiliar with the memory field as well as totally unfamiliar with the management and operation of a manufacturing business in Barbados, West Indies, and with international trade between Barbados and the U.S.;

(c) It made substantial and material alterations in and additions to the production and assembly facilities with a resulting shut down in production, delay in filling orders and increase in costs;

(d) It reorganized and relocated marketing, engineering, prototype and repair operations in the United States with a resulting disruption in management control, loss of efficiency and increase in costs;

(e) It destroyed the existing national marketing organization previously established by ISL;

(f) It discharged ISL's import-export agent before obtaining the necessary licenses to perform this function with a resulting further delay in production, backlog of orders and loss of orders;

(g) It discontinued, and transferred to a manufacturing facility of ENGLISH PLESSEY, the manufacture and assembly of cable harnesses and related electronic assemblies which were part of the business from which profits could be generated during the measuring year;

(h) It refused to consult with or advise former ISL management (including the officers and directors of SCIENTIFIC HOLDING COMPANY, LTD.) with respect to policy or management decisions affecting profits during the measuring year;

(i) It refused to provide former ISL management (including the officers and directors of SCIENTIFIC HOLDING COMPANY, LTD.) with any current or interim financial or operating statements or reports reflecting operating results during the measuring year despite repeated requests for such information and reports;

(j) It failed to take all necessary steps in the management and operation of the business of ISL which would have maximized profits in the measuring year;

(k) It took other divers and ill considered action with a resulting loss of profits in the measuring year.

11. By reason of the foregoing breaches of fiduciary duty and contractual obligations, ISL operations allegedly showed a loss during the measuring year and PLESSEY has notified plaintiff that accordingly it will not pay the balance of the purchase price or any part thereof.

12. As a consequence of PLESSEY's breaches of the February 4 agreement in the respects hereinabove set forth, plaintiff has been damaged in the sum of $1,260,000.

WHEREFORE, plaintiff demands judgment in the sum of $1,260,000 with interest from April 1, 1971, and costs of this action.

COUNT II

Plaintiff, SCIENTIFIC HOLDING COMPANY, LTD., by its attorneys, complaining of defendant PLESSEY INCORPORATED for cause says:

13. Plaintiff realleges the matters and things alleged in paragraph 1 through 11 of Count I of the complaint.

14. At the time ENGLISH PLESSEY entered into the aforementioned agreement on February 4, 1970, it falsely and fraudulently represented to ISL, its officers and directors, its intention to perform the terms and conditions of said agreement, whereas in truth and fact it at that time intended to assume complete control of the management of ISL either itself or through its controlled and dominated subsidiary

U. S. PLESSEY and to operate the business in a manner to minimize profits or incur an actual loss during the measuring year in order to avoid any further payment on the balance of the purchase price and thereby acquire the business and assets of ISL for a fraction of their fair value. The contract negotiations were conducted by Warren J. Sinsheimer who at the time was an officer and director of both ENGLISH PLESSEY and U. S. PLESSEY. Sinsheimer purported to be acting on behalf of both ENGLISH PLESSEY and U. S. PLESSEY in the negotiations and represented he had authority to execute any agreement reached on behalf of either company.

15. The said representations of intention to perform in good faith were known by PLESSEY to be false when made and were made with intent to deceive ISL, its officers and directors and to induce them to enter into the February 4 agreement.

16. ISL at the time the representations were made believed them, and in reliance thereupon, was induced to enter into the February 4 agreement.

17. By reason of the facts set forth above, plaintiff has been damaged in the sum of $1,260,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $1,260,000, together with interest from April 1, 1971 and costs and further prays for punitive damages in the sum of $3,000,000.

COUNT III

Plaintiff, SCIENTIFIC HOLDING COMPANY, LTD., by its attorneys, complains of defendant PLESSEY INCORPORATED and for cause says:

18. Plaintiff realleges the matters and things alleged in paragraph 1 of Count I of the complaint.

19. Defendant PLESSEY INCORPORATED (U. S. PLESSEY) is a Delaware corporation with its principal place of business in New York City, New York. The matter in controversy exceeds exclusive of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

20. Plaintiff realleges the matters and things alleged in paragraph 4 through 11 of Count I of the complaint.

21. ENGLISH PLESSEY pursuant to an understanding and conspiracy with U. S. PLESSEY at the time of the negotiations and execution of the February 4, 1970 agreement, falsely and fraudulently represented to ISL, its officers and directors, its intention to perform the terms and conditions of said agreement, whereas in truth and fact it at that time intended to assume complete control of the management of ISL either itself or through its subsidiary U. S. PLESSEY and to operate the business in a manner to minimize profits or incur an actual loss during the measuring year in order to avoid any further payment on the balance of the purchase price and thereby acquire the business and assets of ISL for a fraction of their fair value. The contract negotiations were conducted by Warren J. Sinsheimer who at the time was an officer and director of both ENGLISH PLESSEY and U. S. PLESSEY. Sinsheimer purported to be acting on behalf of both ENGLISH PLESSEY and U. S. PLESSEY in the negotiations and represented he had authority to execute any agreement reached on behalf of either company.

22. The said representations of intention to perform in good faith were known by ENGLISH PLESSEY and U. S. PLESSEY to be false when made and were made with intent to deceive ISL, its officers and directors and to induce them to enter into the February 4 agreement.

23. ISL at the time the representations were made believed them, and in reliance thereupon, was induced to enter into the February 4 agreement.

24. By reason of the facts set forth above, plaintiff has been damaged in the sum of $1,260,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $1,260,000, together with interest from April 1, 1971 and costs and further prays for punitive damages in the sum of $3,000,000.

COUNT IV

Plaintiff, SCIENTIFIC HOLDING COMPANY, LTD., by its attorneys, complains of defendant PLESSEY INCORPORATED and for cause says:

25. Plaintiff realleges the matters and things alleged in paragraph 1 through 11 of Count I of the complaint.

26. The aforesaid breaches by PLESSEY of its contract with plaintiff were intentional, wanton and malicious and done with the intention and for the purpose of injurying plaintiff and preventing the business from earning any profits during the measuring year.

27. As a consequence of such wilful, wanton and

malicious breaches by PLESSEY, plaintiff has been damaged in the sum of $1,260,000.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $1,260,000, together with interest from April 1, 1971 and costs and further prays for punitive damages in the sum of $3,000,000.

Robert M. Blum

Francis J. McConnell

Attorneys for Plaintiff

Of Counsel:

Silberfeld, Danziger & Bangser
230 Park Avenue
New York, NY 10017
212-889-8400

McConnell, Mahon & Borst
134 South LaSalle Street
Chicago, IL 60603
312-726-9131

AGREEMENT dated the 4th day of February, 1970 by and between THE PLESSEY COMPANY LIMITED, a corporation organized and existing under the laws of England (hereinafter referred to as "PLESSEY") and INTERNATIONAL SCIENTIFIC LTD., a corporation organized and existing under the laws of Barbados, West Indies (hereinafter referred to as "ISL").

WHEREAS, ISL desires that all of its properties be sold to PLESSEY on the terms hereinafter set forth; and

WHEREAS, PLESSEY desires to acquire all of the properties of ISL on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and other good and valuable considerations by each of the parties to the other in hand paid, receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. ISL hereby agrees that, subject to the terms and conditions of this Agreement, ISL will sell, convey, transfer and deliver to PLESSEY, at the closing hereof, all of ISL's then existing assets and business including all of ISL's good will and its right to the use of its name. The assets so to be sold, conveyed, transferred and delivered shall include those owned by ISL on December 31, 1969 balance sheet with only such changes therein as shall have occurred in the ordinary course of ISL's business between December 31, 1969 and the closing, or otherwise as may be consented to or approved by PLESSEY in writing. Without limitation of the fore-

EXHIBIT "A"

going provisions, the aforesaid sale, conveyance and transfer shall include all of the following, if any: all of ISL's rights and interests in, to and under all patents, patent applications, trademarks, trademark registrations and applications therefor, copyrights, copyright registrations and applications therefor, issued or pending, all trade names, labels and other trade rights, whether or not registered, all inventions, discoveries, improvements, processes, formulae, trade secrets, ideas, and other know-how, whether patentable or not, and all shop rights, licenses and other agreements (including agreements with ISL's employees) relating in whole or in part to any of the foregoing.

2. PLESSEY hereby agrees that, at the closing, subject to the terms and conditions of this Agreement, and in consideration for the aforesaid sale, conveyance, transfer and delivery, PLESSEY will deliver to ISL a check for One Hundred and Eighty Thousand ($180,000.00) U.S.DOLLARS drawn by PLESSEY to ISL; and PLESSEY shall deliver to ISL an undertaking whereby PLESSEY assumes and agrees to pay, perform and discharge all debts, obligations, contracts and liabilities of ISL, whether accrued, absolute, contingent or otherwise but only if such debts, obligations, contracts and liabilities are reflected on the December 31, 1969 balance sheet of ISL, or if they were incurred in the ordinary course of ISL's business between December 31,1969

and closing, provided, however, that PLESSEY shall not assume nor does it agree to pay any obligation evidenced by convertible debentures issued by ISL (other than interest provided therein to the closing hereof) nor any expenses of redemption or premiums which are necessitated by any such redemptions.

3. ISL hereby agrees that, at the closing, it will deliver to PLESSEY such deeds, bills of sale, endorsements, assignments, and other good and sufficient instruments of conveyance and transfer, in form satisfactory to PLESSEY'S counsel, Sinsheimer, Sinsheimer & Dubin, Esqs., as shall be effective to vest in PLESSEY good and marketable title to the assets and business to be sold, conveyed, transferred and delivered hereunder, all as provided in this Agreement, and all of ISL's contracts and commitments, books (except minute and stock books which shall be and remain available at all reasonable times for PLESSEY'S inspection), records and other data relating to its assets, business and operations, including, without limitation all its notebooks and other records relating to inventions, discoveries, improvements, processes, formulae, trade secrets, ideas, or other know-how whether patentable or not, and trademarks, tradenames or copyrights, whether registrable or not; and that, simultaneously with such delivery, all such steps will be taken as may be required to put PLESSEY in actual possession and operating control

of such assets and business. All such records, data and other documents shall remain available at all reasonable times for ISL's inspection.

4. ISL hereby agrees that, from time to time, at PLESSEY'S request and without further consideration, ISL will execute and deliver such other instruments of conveyance and transfer and take such other action as PLESSEY reasonably may require more effectively to convey, transfer to and vest in PLESSEY, and to put PLESSEY in possession of, any property to be sold, conveyed, transferred and delivered hereunder, and, in the case of contracts and rights, if any, which cannot be transferred effectively without the consent of third parties which is obtainable, ISL agrees to use its best efforts to assure to PLESSEY the benefit thereof. Nothing herein to the contrary, it shall be essential to the closing of this Agreement that ISL obtain and deliver to PLESSEY at the time of closing the consent by the Barbados government or its instrumentality to the assignment of ISL's lease to PLESSEY and to the continuation of all of the terms of that lease. It shall also be essential that ISL deliver at closing the consent by Granite Leasing Corp., or its appropriate affiliate, to the assignment of ISL's equipment leases to PLESSEY, an acknowledgment of PLESSEY'S right to obtain title to all of the equipment heretofore leased to ISL by Granite Leasing Corp. or its affiliate upon the

compliance by PLESSEY of all of the terms of the lease remaining to be performed, and an estoppel letter from Granite to the effect that all of the lessee's obligations to the date of closing have been performed.

5. Paragraph 6 hereof provides that ISL will be entitled to certain additional money depending upon the amount of profits derived from the assets being acquired hereby during the year commencing on the first day of the first calendar month after closing (hereinafter called "the measuring year"). In order to allow those assets to generate profits during the measuring year, PLESSEY hereby agrees that for that period it will:

a. Make available to the business within one week after closing funds totalling not less than Six Hundred Thousand ($600,000.00) U.S.Dollars;

b. Continue ISL'S business in good faith, itself or through a subsidiary,

c. Continue all agreements between ISL and sales representatives in the United States for the measuring year except for those agreements which are terminated for cause, and

d. The present management of ISL shall operate the business during the measuring year and shall have the maximum freedom to operate the business in a manner which will produce, in the judgment of such management, the maximum profit available provided, however, that any policy

directive issued by the directors of PLESSEY shall be complied with. Should PLESSEY propose any course of action which would be detrimental to attaining $360,000 profits during the measuring year ISL management shall have the option of requiring prior to commencement of such course of action that the net additional expenditure of ISL in pursuing such course over and above what it would have incurred if it had not pursued such course be excluded in determining profits. Notwithstanding the foregoing, if ISL profits commencing with the third calendar month of the measuring year average at least Fifteen Thousand ($15,000) U.S.Dollars per month and if there have not been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and PLESSEY shall have the right to assume full management responsibilities. In such event, however, PLESSEY shall be obligated to continue the business of ISL during the measuring year in good faith.

Should the ISL management and PLESSEY disagree whether any course of action be detrimental to attaining $360,000 profits during the measuring year and should the ISL management so notify PLESSEY prior to the commencement of that course of action, the course of action shall nevertheless be followed and the question as to whether it is or has been detrimental to attaining $360,000 profits during the measuring year shall be arbitrated by a national American

accounting firm acceptable both to ISL management and PLESSEY whose determination shall be final and binding. The expenses of the arbitration shall be paid as follows:

a) if the arbitrator determines that all of the proposed course of action was or would be detrimental to attaining $360,000 profits during the measuring year, the entire expense of the arbitration shall be borne by PLESSEY;

b) if the arbitrator determines that none or only some of the proposed course of action was or would be detrimental to attaining $360,000 profits during the measuring year, the expense of the arbitration shall be borne as follows:

i) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, exceed $360,000, the excess over $360,000 shall be multiplied by four and if the product thereof is sufficient to cover all arbitration expenses all such expenses shall be paid by PLESSEY;

ii) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, are less than $360,000, the expenses of arbitration shall be borne equally by PLESSEY and ISL. (Should PLESSEY advance any sums which should have been paid by ISL, PLESSEY may deduct a like amount from additional moneys earned by ISL according to Paragraph 6);

iii) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, exceed $360,000 but not by a sufficient amount, as computed under subparagraph 5(b)(i), to cover all of the

expenses of arbitration, subparagraph 5(b)(i) shall be applied to the extent possible and subparagraph 5(b)(ii) shall apply to the balance of the expenses.

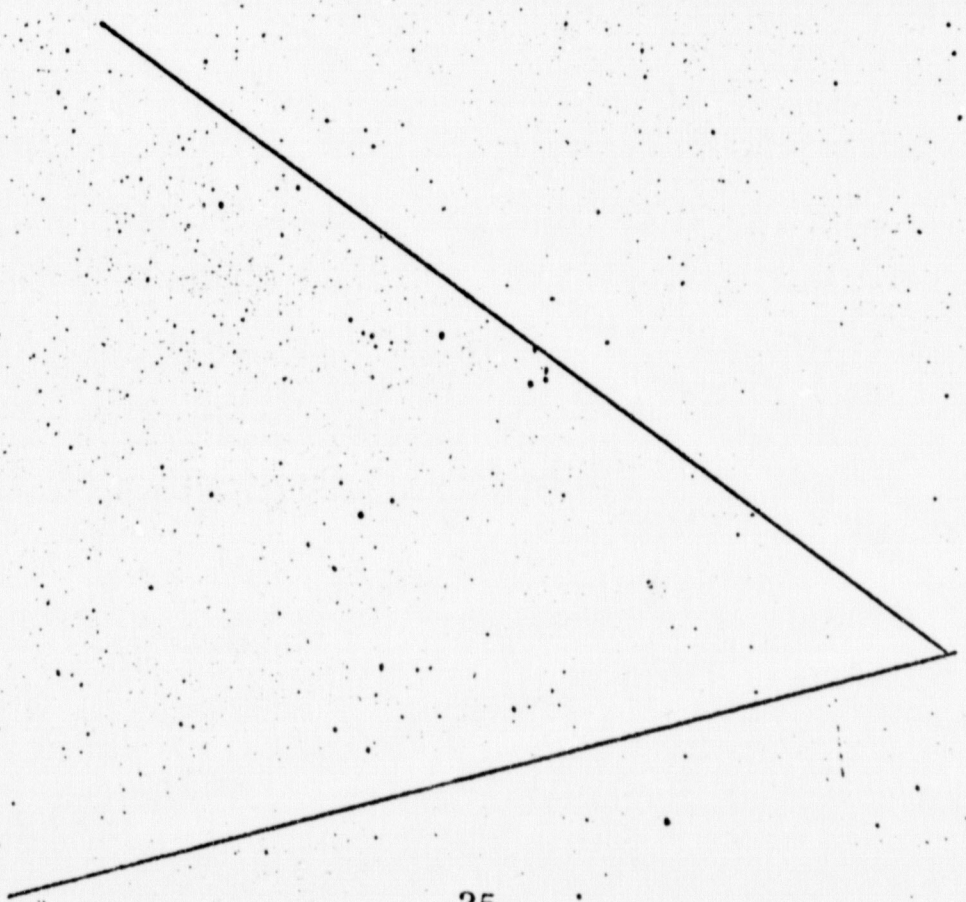
6. If during the measuring year the profits (as defined below) derived from the assets being acquired total Three Hundred and Sixty Thousand ($360,000.00) U.S.Dollars, or more, PLESSEY shall deliver to ISL not later than ninety (90) days thereafter a check in the amount of One Million Two Hundred and Sixty Thousand ($1,260,000.00) U.S.Dollars drawn to ISL. Should the profits be less than Three Hundred and Sixty Thousand ($360,000.00)U.S.Dollars during that period, PLESSEY shall deliver to ISL not later than ninety (90) days thereafter a check drawn to ISL,in an amount which bears the same ratio to One Million Two Hundred and Sixty Thousand ($1,260,000.00)U.S.Dollars that the amount of profits for the measuring year bears to Three Hundred and Sixty Thousand ($360,000.00)Dollars. If no additional money is payable or if the business shall be unprofitable ISL shall nevertheless be entitled to retain the One Hundred and Eighty Thousand ($180,000.00)U.S.Dollars paid to it at closing.

"Profit" as used in this paragraph 6 and in paragraph 5 is intended to and shall include only income or losses (before any taxes measured by income) actually generated by deployment of the assets of ISL such deployment being principally in the manufacture and sale of memory

planes and memory stacks, cable harnesses and other electrical assemblies, and shall not include income or losses resulting from changes in accounting methods, practices or procedures. Accordingly, profits shall be computed in accordance with generally accepted accounting principles applied consistently with those applied by ISL in the past except that:

A) There shall be no write down or charges to profits resulting from facts established to have occurred during years prior to the measuring year;

B) No charge shall be made to profit for any expense of PLESSEY such as managerial services or



additional or new accounting systems or any other services furnished or proposed to be furnished to ISL by PLESSEY which would not have been sustained by ISL had ISL continued the business during the measuring year unless ISL management agrees that any such charge for services shall be made to ISL;

C) Depreciation shall be charged on the same basis as charged heretofore by ISL utilizing the same useful lives and rates;

D) The cost of all research and development, training and engineering instituted by ISL management during the measuring year will be charged against profit as such costs are incurred;

E) Any sale generated by PLESSEY or made by ISL to PLESSEY shall be at the same prices charged by ISL to other customers except there shall be deducted 8% of Barbados f.o.b. prices for all sales generated by or made to PLESSEY for which no commission is to be paid to a salesrepresentative;

F) No charge shall be made against gross income for the cost of the funds made available to the business under the Paragraph 5(a) hereof;

G) As a general guide items of the nature shown as cost of doing business on the ISL proforma income statement which is attached hereto as Exhibit shall be considered proper charges against income for purposes of this Paragraph 6.

7. The closing of this transaction shall take place at a location in Bridgetown, Barbados, W.I., to be selected by PLESSEY at 10 A.M. on March 2, 1970. Either party, however, may by written notice to the other received not later than ten (10) days before that date postpone the closing to a date not beyond fourteen (14) days after the closing date fixed by this paragraph and PLESSEY may extend the closing to a date thirty (30) days after the closing date fixed by this agreement if the Bank of England approval has not as yet been received in accordance with Paragraph 19 hereof. If closing is not consummated because approval by the Bank of England has not been received within the period herein described, this Agreement shall terminate without liability of any kind on the part of either ISL or PLESSEY.

8. ISL hereby agrees that it will duly convene a meeting of the holders of its common stock to be held prior to the date of closing for the purpose of voting upon the sale of its assets in accordance with this Agreement and in order to change its name.

9. PLESSEY hereby agrees that it will take all such actions prior to the date of closing as may be required in order to acquire the assets of ISL on the terms provided in this Agreement.

10. ISL represents and warrants:

a. That ISL is a corporation duly organized, validly existing and in good standing under the laws of Barbados, W.I., and that it has corporate power to carry on its business as it is now conducted.

b. That the execution, delivery and performance of this Agreement by ISL, including, without limitation, the sale, conveyance, transfer and delivery contemplated hereby have been duly and effectively authorized by ISL's Board of Directors, subject to approval by its stockholders as required by law.

c. ISL has delivered to PLESSEY copies of the following financial statements, all of which are true and complete and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated:

(i) ISL's balance sheet as of December 31, 1968, certified by Price Waterhouse & Co. including the notes thereto, which balance sheet presents a true and complete statement as of its date of the financial condition and assets and liabilities of ISL;

(ii) The balance sheet of ISL as of December 31, 1969, attested to by

ISL's controller which, to the extent of ISL's knowledge, presents a true and complete statement as of its date of the financial condition and assets and liabilities of ISL;

(iii) A statement of ISL's profit and loss for the period from January 1, 1968 to December 31, 1968, certified by Price, Waterhouse & Co., including the notes thereto, which fully and accurately presents the results of ISL's operations for the period indicated, and

(iv) A statement of ISL's profit and loss for the period from January 1, 1969 to December 31, 1969, attested to by ISL's controller which, to the extent of ISL's knowledge, fully and accurately presents the results of ISL's operations for that period.

d. Except as and to the extent reflected or reserved against in ISL's balance sheets described above, ISL, as of the date thereof, had no liabilities or obligations (whether accrued, absolute, contingent or otherwise)

of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities due or to become due and whether

(i) Incurred in respect of or measured by ISL's income for any period prior to the close of business on December 31, 1969, or

(ii) Arising out of transactions entered into, or any state of facts existing, prior thereto.

e. Since December 31,1969, there has not been:

(i) Any change in ISL's financial condition, assets, liabilities or business,other than changes in the ordinary course of business,the sale of the property which has been the residence of E.Allan Kovar, and the writing off of approximately Twenty Thousand ($20,000.00) U.S.Dollars of testing equipment. Operating losses not at a rate in excess of Twenty Thousand ($20,000.00)U.S.Dollars per month for the period from December 31,1969 to the closing hereof shall not constitute an out of the ordinary change of ISL's condition;

(ii) Any declaration, setting aside or payment of any dividend or other distribution in respect of

ISL's capital stock;

(iii) Any increase in the compensation payable or to become payable by ISL to any of its officers or agents, any wage increases for employees who are considered direct labor, other than normal wage raises, or any increases of compensation payable or to become payable to other employees taken as a group in excess of Ten Thousand ($10,000.00) U.S.Dollars taken on an annual rate.

(iv) Any significant labor trouble or any other event or condition of any character which has materially and adversely affected ISL's business.

f. The accounts receivable shown on ISL's balance sheet of December 31, 1969, are, in the reasonable judgment of ISL, collectible in the aggregate amount shown on that balance sheet, less a reserve of $15,000.00.

g. The inventories of ISL shown on its balance sheet of December 31, 1969 or thereafter acquired by ISL prior to the date of this Agreement, consist of items of a quality and quantity useable in the normal course of ISL's business; the value of obsolete materials or of materials

below standard quality has been written down to realizable market value and the values at which such inventories are carried reflect ISL's normal inventory valuation policy of stating the inventory at cost, not in excess of market, all in accordance with generally accepted accounting principles.

h. ISL has good and marketable title to all of its assets free and clear of all liens and encumbrances except liens and encumbrances resulting from a lending agreement between ISL and the Canadian Imperial Bank, a copy of which is attached hereto as Exhibit . ISL has not received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or to its owned or leased properties.

i. ISL will deliver to PLESSEY, at least fourteen (14) days before the date scheduled herein for closing, accurate lists and summary descriptions, certified by ISL to be correct to the best of its knowledge and belief, of the following:

(i) All real property owned of record or beneficially by ISL and a brief description of the principal buildings and structures located thereon, and all leases of real property to which ISL is a party;

(ii) A copy of the Notification of Approved Export Status issued to ISL by the Government of Barbados, W.I., or

its instrumentality.

(iii) Inventories of finished products and goods in process, materials, supplies, machinery and equipment, as recorded in ISL's books of account and reflected in its balance sheet of December 31, 1969.

(iv) If any, all United States and foreign patents, trademark and trade name registrations, copyrights and copyright registrations which will not have expired on the date of closing, all United States and foreign applications now pending for patents, trademarks or trade name registrations or copyright registrations.

(v) If any, all licenses granted by or to ISL and all other agreements to which ISL is a party which may be in force as of the closing hereof and which relate in whole or in part to any items of the categories mentioned in the subparagraph immediately above or to inventions, discoveries, improvements, processes, formulae, trade secrets, ideas or other know-how, or labels, whether

owned by ISL or otherwise;

(vi) All automobiles and trucks owned or leased (whether by written or oral agreements) by ISL;

(vii) All insurance policies in force with respect to ISL covering all of its assets and operations;

(viii) All existing contracts and commitments of ISL involving payment by ISL of more than $1,000.00 or extending beyond May 31, 1970, or otherwise materially affecting ISL's business, including all contracts made with sales representatives. Except as shown on this list, ISL is not in default under any such contract or commitment;

(ix) The names and current annual salary rates of all of ISL's officers and employees whose current annual salary rate is $10,000.00 or more, together with a copy of any salary plan or plan of fringe benefits paid or payable to such persons, and

(x) The name of each bank in which ISL has an account and the names of all persons authorized to draw thereon.

True and complete copies of all contracts, commitments or other agreements referred to above shall be delivered by ISL to Sinsheimer, Sinsheimer and Dubin, Esqs., 660 Madison Avenue, New York, New York, not later than fourteen (14) days prior to closing.

j. So far as is known to ISL, there is no litigation, proceeding or government investigation pending, threatened or otherwise relating to ISL or to its assets or business or to the transaction contemplated by this Agreement, nor is there any basis known to ISL for any such action other than a suit for wrongful discharge where the maximum exposure of ISL and the maximum exposure assumed by PLESSEY is one month salary of the plaintiff. ISL has made known to PLESSEY that it may pursue a purported cause of action against Data 100 Inc. which cause of action shall not be considered an asset of ISL for purposes of this Agreement.

k. All negotiations relative to this Agreement and the transaction contemplated hereby have been carried on by ISL directly with PLESSEY, without the intervention of any person as the result of any act of ISL (and, so far as known to ISL, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or any like payment.

11. PLESSEY hereby represents and warrants that it is a corporation duly organized and existing and in good standing under the laws of England. PLESSEY further represents and warrants that the negotiations relative to

this Agreement and the transactions contemplated hereby have been carried on by PLESSEY directly with ISL, without the intervention of any persons as the result of any act of PLESSEY (and, so far as known to PLESSEY, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or any like payment.

12. ISL hereby agrees that, pending the closing and except as consented to by PLESSEY in writing:

a. ISL's business shall be conducted only in the ordinary course which shall not include the making of any commitment, other than normal sale and purchase commitments, extending beyond the date of closing other than with PLESSEY's written consent;

b. No dividend or other distribution or payment shall be made or paid in respect of its capital stock;

c. No increase shall be made in the compensation payable or to become payable by ISL to any officer or agent, to any employees who are considered direct labor other than normal wage raises or to any other employees, taken as a group, in excess of Ten Thousand ($10,000.00) U.S.Dollars taken on an annual basis.

d. ISL shall not increase its borrowings as shown on its December 31, 1969 balance sheet;

e. No change shall be made in the banking arrangements reflected in Paragraph 10 (i)(x) hereof;

f. ISL will use its best efforts to preserve its business organization, to keep available to PLESSEY the services of ISL's officers and employees and to preserve for PLESSEY the good will of ISL's suppliers, customers and others having business relations with it; and

g. ISL will duly comply with all laws applicable to it and to the conduct of its business.

13. All of PLESSEY's obligations under this Agreement are subject to the fulfillment, prior to or at closing, of each of the following conditions:

a. PLESSEY shall not have discovered any material error, mis-statement or omission in any of the representations and warranties made by ISL;

b. ISL's representations and warranties contained in this Agreement shall be deemed to have been made again as of the time of the closing and shall then be true in all material respects and ISL shall have performed and complied with all agreements required by this Agreement to be performed or complied with no later than closing;

c. The sale and transfer of its assets, business and good will and its change of name, as provided in this Agreement, shall have been approved by the holders of at least that percentage of ISL's outstanding stock as may be required under the laws of Barbados, W.I.;

d. PLESSEY shall have been furnished with

an opinion dated the closing date of counsel for ISL, Sonnenschein, Levinson, Carlin, Nath & Rosenthal, to the effect that:

(i) ISL is a corporation duly organized, validly existing and in good standing under the laws of Barbados, W.I.;

(ii) The execution, delivery and performance of this Agreement by ISL have been duly authorized and approved by all requisite action of ISL's Board of Directors and stockholders and that this Agreement has been duly executed and delivered by ISL and constitutes the valid and binding obligation of ISL in accordance with its terms;

(iii) Except as may be specified by such counsel, that they do not know of any litigation, proceeding or governmental investigation pending or threatened against or relating to ISL, its properties or business, or the transaction contemplated by this Agreement, or of any legal impediment

to the operation by PLESSEY of ISL's properties and business in the ordinary course.

e. PLESSEY shall have been furnished with evidence in form and substance satisfactory to PLESSEY to the effect that at the time of closing ISL had good and marketable title to the properties reflected on its balance sheet as of December 31, 1969, free and clear of all liens and encumbrances subject only to the exception mentioned in paragraph 10 above pertaining to a bank lending agreement and to any equipment leases where the covered equipment has been accounted on the ISL balance sheets as assets of ISL, and that the instruments of conveyance and transfer executed and delivered by ISL at the closing are valid in accordance with their terms and effectively vested in PLESSEY good and marketable title, subject only to the aforementioned exception, to all of the property of ISL and its business and good will as contemplated by this Agreement.

f. PLESSEY shall have received an opinion dated the closing of its counsel, J.I. NICHOLS & CO., to the effect that all of the instruments of conveyance and transfer being delivered by ISL to PLESSEY are satisfactory to them.

14. All of the obligations of ISL under this Agreement are subject to the fulfillment no later than closing of each of the following conditions:

a. ISL shall not have discovered any material error, mis-statement or omission in the representations and warranties made herein by PLESSEY.

b. PLESSEY'S representations and warranties contained in this Agreement shall be deemed to have been made again as at the time of closing and shall be true in all material respects and PLESSEY shall have complied with all agreements and conditions required by this Agreement to have been performed or complied with no later than closing.

c. PLESSEY shall have delivered to ISL an opinion dated the closing date of PLESSEY'S counsel, Herbert Oppenheimer, Nathan & Vandyk, to the effect that:

(i) PLESSEY is a corporation duly organized and existing and is in good standing under the laws of England;

(ii) The execution, delivery and performance of this Agreement by PLESSEY have been duly authorized and this Agreement has been duly executed and delivered by PLESSEY and constitutes the valid and binding obligation of PLESSEY in accordance with its terms;

(iii) The undertaking provided for in Paragraph 2 hereof has been duly executed and delivered and is binding and effective according to its terms.

15. Should PLESSEY notify ISL at least fourteen (14) days prior to the closing hereof that it elects to have ISL comply with or join with PLESSEY in complying with any bulk sale procedures it considers applicable hereto, ISL shall take all steps appropriate thereto.

16. PLESSEY may assign this Agreement to a subsidiary corporation, in which event PLESSEY'S sole obligations hereunder shall be to make available to its subsidiary sufficient money as may be required to be paid to ISL under the terms of this Agreement, to make available as provided above the sum of Six Hundred Thousand ($600,000.00) Dollars for the operation of the business during the measuring year and to deliver its undertaking as provided in Paragraph 2 hereof.

17. Should any representations or warranties by ISL prove to be inaccurate or untrue, PLESSEY may, in addition to any other remedies available to it, diminish any further payments to ISL by an amount sufficient to cover the damage sustained by reason of the misrepresentation or breach of warranty.

18. It is expressly understood by ISL that this Agreement is subject to the approval of the Bank of England. PLESSEY shall use all reasonable efforts to obtain such approval.

19. This agreement shall be interpreted under and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day first above written.

THE PLESSEY COMPANY LIMITED

By _____

INTERNATIONAL SCIENTIFIC LTD.

By _____

February 4, 1970

Julius Lewis, Esq.
Sonnenschein Levinson Carlin
Nath & Rosenthal
The Brunswick Building
69 West Washington Street
Chicago, Illinois 60602

Re: Plessey with ISL

Dear Julius:

This will confirm our understanding concerning two points which have not been included in the acquisition agreement between Plessey and ISL:

1. In the event that the Bank of England declines permission for The Plessey Company Limited to make the acquisition described in the agreement, we will seek the bank's permission instead for the acquisition to be made by Plessey Incorporated in which event Plessey Incorporated shall be substituted throughout the agreement for The Plessey Company Limited.

2. It is a condition to closing that the obligation of Mr. Johnson to ISL shall have been paid, and that the related obligation to the bank shall have been reduced by a like amount.

I shall give some thought to the method by which we will close, and I will be in touch with you about next week.

Enclosed is a copy of the agreement which Allan Kovar signed today. I have asked our people in England to affix the corporate seal to a copy of the agreement which I will send to Allan as soon as I have it. Inaddition, I have asked them to start doing whatever has to be done to get the approval from the Bank of England.

Would you please sign the enclosed copy of this letter indicating your agreement to the two points above and return the signed copy to me.

Sincerely,

SHD:sr
Enclosures

Seth H. Dubin

AGREED:

_____

ONLY COPY AVAILABLE

THE PLESSEY COMPANY LIMITED

- and -

INTERNATIONAL SCIENTIFIC LTD.

AGREEMENT

SINSHEIMER, SINSHEIMER AND DUBIN
ATTORNEYS AT LAW
660 MADISON AVENUE
NEW YORK, N. Y. 10021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation, Plaintiff, - against - PLESSEY INCORPORATED, a Delaware corporation, Defendant.	DBB 72 Civ. 4040 ANSWER

Defendant, Plessey Incorporated, by its attorneys Royall, Koegel & Wells, for its answer to the complaint herein states:

1. Denies knowledge or information sufficient to form a belief concerning the allegations of paragraph 1 of the complaint except admits that International Scientific Ltd. ("ISL") was engaged in the manufacture, assembly and sale of memory core planes and stacks and related equipment for use in computer and peripheral equipment, that ISL's manufacturing facility was located in Barbados and that in 1970 the business and assets of ISL were sold to Plessey Incorporated ("U.S. Plessey").

2. Defendant denies each and every allegation in paragraph 2 of the complaint except admits that U.S. Plessey is a Delaware corporation with offices in New York City, New York and is a wholly owned subsidiary of Plessey Company Limited ("English Plessey"). Defendant further

admits that English Plessey is a foreign corporation organized and existing under the laws of England, is engaged in world wide operations including electronics and metals products and has combined sales in excess of $500,000,000. Defendant further admits that English Plessey has wholly owned subsidiaries abroad and in the United States including U.S. Plessey.

3. Defendant denies each and every allegation in paragraph 4 of the complaint except admits that on or about February 4, 1970, ISL and English Plessey entered into a written agreement (the "Agreement") and that at a subsequent time U.S. Plessey was substituted for English Plessey as a party to the Agreement. Defendant incorporates all of the terms of the Agreement and the various amendments thereto in response to the complaint herein and respectfully refers to the terms of the Agreement, as amended, which speak for themselves. A copy of the Agreement and all amendments thereto is annexed hereto as Exhibit A.

4. Defendant denies each and every allegation contained in paragraph 5 of the complaint and respectfully refers to the terms of the Agreement, as amended, which speak for themselves.

5. Defendant denies each and every allegation contained in paragraph 6 of the complaint except admits that at the closing on March 2, 1970, the Agreement was amended.

6. Defendant denies each and every allegation of paragraph 7 of the complaint.

7. Defendant denies each and every allegation contained in paragraph 8 of the complaint except admits that defendant communicated with ISL's prior management by letter dated June 9, 1970, which letter speaks for itself.

8. Defendant denies each and every allegation contained in paragraphs 9 and 10 of the complaint.

9. Defendant denies each and every allegation contained in paragraph 11 of the complaint except admits that ISL operations showed a loss during the measuring year and U.S. Plessey has notified plaintiff that it will not make any payments under the Agreement, as amended.

10. Defendant denies each and every allegation contained in paragraph 12 of the complaint.

11. Defendant repeats and realleges the allegations in paragraphs 1 through 9 of this answer in response to paragraph 13 of the complaint.

12. Defendant denies each and every allegation contained in paragraphs 14, 15, 16 and 17 of the complaint.

13. Defendant repeats and realleges the allegations of paragraph 1 of this answer in response to paragraph 18 of the complaint.

14. Defendant admits the allegations in paragraph

19 of the complaint except denies the allegation that U.S. Plessey's principal office is in New York City.

15. Defendant repeats and realleges the allegations in paragraphs 3 through 9 of this answer in response to paragraph 20 of the complaint.

16. Defendant denies each and every allegation contained in paragraphs 21, 22, 23 and 24 of the complaint.

17. Defendant repeats and realleges the allegations in paragraphs 1 through 9 of this answer in response to paragraph 25 of the complaint.

18. Defendant denies each and every allegation contained in paragraphs 26 and 27 of the complaint.

AS AND FOR A FIRST SEPARATE AND COMPLETE DEFENSE TO EACH CLAIM IN THE COMPLAINT AND AS A FIRST COUNTERCLAIM

19. In or about November and December 1969, agents of English Plessey discussed with agents of ISL the purchase by English Plessey of the business and assets of ISL.

20. In furtherance of such negotiations and in order to induce English Plessey to enter into an agreement to purchase said business and assets, agents of ISL furnished the agents of English Plessey with the following financial statements:

(a) a pro forma balance sheet of ISL as of October 31, 1969, which

showed the changes in the assets, liabilities and shareholders equity of ISL from September 30 to October 31, 1969; and

(b) a balance sheet, statement of profit and loss and schedules of manufacturing, administration, marketing and engineering expenses as of November 30, 1969, which showed the changes in the financial condition of ISL from October 31, 1969.

21. The agents of ISL represented to English Plessey that the aforesaid financial statements described in the preceding paragraph were true and correct and accurately set forth the financial condition of ISL.

22. The agents of ISL further represented that ISL's net worth was decreasing by approximately $20,000 per month.

23. In reliance upon the financial statements and representations described in paragraphs 20, 21 and 22 above and the representations and warranties contained in the Agreement, English Plessey entered into the Agreement with ISL to purchase the business and assets of ISL.

24. In paragraph 10(b) of the Agreement, ISL warranted and represented:

"b. That the execution, delivery and performance of this Agreement by ISL, including, without limitation, the sale, conveyance, transfer and delivery contemplated hereby have been duly and effectively authorized by ISL's Board of Directors, subject to approval by its stockholders as required by law."

25. In paragraph 10(c) of the Agreement, ISL warranted and represented that ISL's balance sheets and statements of profit and loss as of December 31, 1968 and December 31, 1969 were true and complete statements of the financial condition and the assets and liabilities of ISL as of those dates.

26. In paragraph 10(d) of the Agreement, ISL warranted and represented that except to the extent reflected or reserved against in the ISL balance sheets described in paragraph 10(c), ISL had no liabilities or obligations.

27. In paragraph 10(e)(i) of the Agreement, ISL warranted and represented:

"e. Since December 31, 1969, there has not been:

(i) Any change in ISL's financial condition, assets, liabilities or business, other

than changes in the ordinary course of business . . . and the writing off of approximately Twenty Thousand ($20,000.00) U.S. Dollars of testing equipment. Operating losses not at a rate in excess of Twenty Thousand ($20,000.00) U.S. Dollars per month for the period from December 31, 1969 to the closing hereof shall not constitute an out of the ordinary change of ISL's condition; . . ."

28. In paragraph 10(f) of the Agreement, ISL warranted and represented that the accounts receivable shown on the balance sheet as of December 31, 1969 were collectible in the reasonable judgment of ISL less a reserve of $15,000.

29. In paragraph 10(g) of the Agreement, ISL warranted and represented:

"g. The inventories of ISL shown on its balance sheet of December 31, 1969 or thereafter acquired by ISL prior to the date of this Agreement, consist of items of a quality and quantity useable in the normal course of ISL's business; the value of obsolete

materials or of materials below standard quality has been written down to realizable market value and the values at which such inventories are carried reflect ISL's normal inventory valuation policy of stating the inventory at cost, not in excess of market, all in accordance with generally accepted accounting principles."

30. Paragraph 13 of the Agreement, together with the amendments, provides that all of U.S. Plessey's obligations under the Agreement are subject to the fulfillment, prior to or at closing, of certain conditions including paragraph 13(b) which provides as follows:

"b. ISL's representations and warranties contained in this Agreement shall be deemed to have been made again as of the time of the closing and shall then be true in all material respects and ISL shall have performed and complied with all agreements required by this Agreement to be performed or complied with no later than closing;"

31. As of the date of execution of the Agreement on February 4, 1970, the balance sheet and statement of

profit and loss of ISL as of December 31, 1969 were not yet available and were not delivered to English Plessey.

32. By letter agreement dated February 18, 1970, the Agreement was amended in certain respects including the substitution of U.S. Plessey for English Plessey wherever the name of English Plessey appeared in the Agreement.

33. On or about March 2, 1970, the agents and attorneys of U.S. Plessey and ISL met in Barbados to consummate the Agreement, as amended February 18, 1970.

34. On or about March 2, 1970, the agents of ISL delivered a balance sheet and statement of profit and loss of ISL as of December 31, 1969, together with the written representations of the Controller of ISL that such financial statements were in accordance with the books of ISL and that said financial statements presented fairly the state of ISL's affairs as at December 31, 1969.

35. The financial statements described in the preceding paragraph show that the financial statements given to English Plessey during negotiations and described in paragraph 20 of this answer were false and misleading in several material respects including, but not limited to, the following:

(a) current net worth of ISL was substantially overstated;

(b) net sales of ISL for the first eleven months of 1969 were substantially overstated; and

(c) net loss of ISL for the first eleven months of 1969 was substantially understated.

36. The agents of ISL also delivered to agents of U.S. Plessey statements of profit and loss and related financial information for ISL for the months of January and February 1970.

37. The financial statements of ISL for the months of January and February 1970 showed that ISL had experienced total losses in excess of a monthly rate of $20,000.

38. By reason of the financial statements described in paragraphs 34 and 36 of this answer delivered by ISL at the closing, ISL was unable to warrant and represent as of the time of closing, as required by paragraph 13(b) of the Agreement, that the warranty and representation contained in paragraph 10(e)(i)was true in all material respects.

39. Consequently, as of March 2, 1970, U.S. Plessey had the right to cancel the Agreement and to refuse to consummate the transaction.

40. In consideration for the amendments to the Agreement executed at the closing on or about March 2, 1970, which amendments are attached hereto as part of Exhibit A, defendant agreed to waive its right to cancel the Agreement and to proceed with the closing of the transaction.

41. The aforesaid amendments included an amendment to paragraph 5(d) of the Agreement, as amended February 18, 1970, which provides as follows:

> "The modification Agreement dated February 18, 1970 with reference to the right by Plessey to assume full management responsibilities on the occurrence of certain events is hereby further modified so that if the profits of ISL commencing May 1, 1970 (crediting to the month of May the net profits of the 2-month period comprised of March and April, 1970, but not charging any net loss for that period) average less than $15,000 per month, or if there have been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and Plessey shall have the right to assume full management responsibilities. In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in good faith."

42. By reason of the provisions of paragraphs 10(b) and 13(b) of the Agreement, set forth in paragraphs 24 and 30 of this answer, ISL warranted and represented at

the time of the closing that the representatives of ISL at the closing had all necessary authority to enter into the foregoing amendments.

43. U.S. Plessey entered into the aforesaid amendments to the Agreement on March 2, 1970 in reliance upon the authority of the representatives of ISL present at the closing and would not have proceeded with the closing if said representatives had made known their lack of authority to enter into a binding and valid agreement on behalf of ISL.

44. If, as indicated in paragraph 6 of the complaint, ISL's president did not have actual authority to enter into such amendments, there was a complete failure of consideration with respect to U.S. Plessey's waiver of its right to cancel the Agreement and to refuse to close the transaction.

45. Defendant, therefore, requests judgment rescinding the agreement of February 4, 1970, as amended February 18, 1970, and restoring the parties to their original positions as of March 2, 1970, together with damages in the amount of $3,000,000 plus interest from March 2, 1970.

AS AND FOR A SECOND SEPARATE AND COMPLETE DEFENSE TO EACH CLAIM IN THE COMPLAINT

46. Defendant repeats and realleges each and every allegation contained in paragraphs 33 through 43 of this answer.

47. In or about early June 1970, ISL reported that profits during the month of May 1970 had not reached $15,000.

48. By letter dated June 9, 1970, U.S. Plessey gave notice to ISL that pursuant to the provisions of paragraph 5(d) of the Agreement, as amended on March 2, 1970, U.S. Plessey exercised its right to assume complete management and control of the business and operations of ISL.

49. Upon information and belief, in or about June 1970, at least five directors, representing a majority of the Board of Directors of ISL, received a copy of the letter dated June 9, 1970 described in paragraph 48 hereof.

50. The aforesaid letter specificially referred to the provisions of the amendment dated March 2, 1970, attached hereto as part of Exhibit A, which paragraph 6 of the complaint indicates was unauthorized and never approved or ratified by the Board of Directors of ISL, as the basis for defendant's assumption of management and control of ISL.

51. By letter dated June 17, 1970, Mr. Raymond N. Carlen responded to defendant's letter dated June 9, 1970 in which letter Mr. Carlen stated:

> "On behalf of the Directors of Scientific Holding Company, Ltd., I wish to acknowledge receipt of your

letter to them of June 9, 1970, concerning your assumption of complete management control of International Scientific (1970) Limited."

52. The aforesaid letter from Mr. Carlen did not challenge the validity of the amendment dated March 2, 1970, the authority of the representatives of ISL to enter into such amendment at the time of closing or the exercise of defendant's right to assume management and control under the terms of said amendment in June 1970.

53. At no time between June 9, 1970 and the date upon which this action was commenced has any director of ISL or the plaintiff herein communicated to defendant in writing challenging the validity of the amendment dated March 2, 1970, the authority of the representatives of ISL to enter into such amendment at the time of closing or the exercise of defendant's right to assume management and control under the terms of said amendment in June 1970.

54. Assuming that the representatives of ISL lacked actual authority to legally bind ISL with respect to the amendments to the Agreement, as amended February 18, 1970, made at the closing on March 2, 1970, the conduct of the Board of Directors of ISL between June 9, 1970 and the date on which this action was commenced constitutes ratification and approval of the actions of the representatives of ISL at the closing on March 2, 1970.

AS AND FOR A THIRD SEPARATE
AND COMPLETE DEFENSE TO EACH
CLAIM IN THE COMPLAINT

55. Defendant repeats and realleges each and every allegation contained in paragraphs 33 through 43 and paragraphs 48 through 53 of this answer.

56. Assuming that the representatives of ISL lacked actual authority to legally bind ISL with respect to the amendments to the Agreement, as amended February 18, 1970, made at the closing on March 2, 1970, plaintiff is estopped from asserting such lack of authority at this time by reason of the failure of the Board of Directors of ISL to repudiate said amendments at any time between June 9, 1970 and the date on which this action was commenced.

AS AND FOR A FOURTH SEPARATE
AND COMPLETE DEFENSE TO EACH
CLAIM IN THE COMPLAINT

57. Defendant repeats and realleges each and every allegation contained in paragraphs 24, 30, 33-43 of this answer.

58. At all relevant times including the closing of this transaction on or about March 2, 1970, Mr. Allan Kovar, President of ISL, represented that he had authority to legally bind ISL with respect to all actions necessary to accomplish the closing under the Agreement, as amended.

59. At the closing, ISL was also represented by an attorney who, upon information and belief, was a member of the firm which acted as general counsel for ISL in 1969 and 1970.

60. Upon information and belief, said attorney had knowledge of the scope of Mr. Kovar's authority to represent and legally bind ISL in connection with all actions taken at the closing on or about March 2, 1970.

61. At the closing, neither Mr. Kovar nor the attorney described in paragraph 59 indicated in any way that any further action would be required by the Board of Directors or the shareholders of ISL before the amendments to the Agreement made on March 2, 1970 could become effective and legally binding on ISL.

62. Defendant, therefore, reasonably relied upon the apparent authority of Mr. Kovar to act for and legally bind ISL with respect to all actions taken by Mr. Kovar at the closing.

AS AND FOR A FIFTH SEPARATE AND COMPLETE DEFENSE TO EACH CLAIM IN THE COMPLAINT AND AS A SECOND COUNTERCLAIM

63. Defendant repeats and realleges each and every allegation contained in paragraphs 19 through 41 of this answer.

64. In reliance upon the warranties and representations of ISL and the financial statements described in paragraph 34 of this answer, defendant waived its right to cancel the Agreement at the closing on March 2, 1970.

65. In reliance upon the aforesaid warranties and representations and the financial statements described

in paragraph 34 of this answer, defendant invested approximately $3,000,000 in the business of ISL prior to and during the measuring year.

66. Following the assumption of management and control by defendant, defendant discovered that the warranties and representations set forth in paragraphs 19 through 41 and the financial statements described in paragraph 34 were untrue and inaccurate in several material respects including but not limited to:

(a) substantial overvaluation of current assets;

(b) substantial understatement of current liabilities; and

(c) substantial understatement of the reserve for bad debts with respect to accounts receivable.

67. By reason of the foregoing, ISL breached the Agreement, as amended, to the serious financial detriment of defendant.

68. Defendant, therefore, requests damages in the amount of $3,000,000 together with interest from March 2, 1970.

AS AND FOR A SIXTH SEPARATE AND COMPLETE DEFENSE TO EACH CLAIM IN THE COMPLAINT AND AS A THIRD COUNTERCLAIM

69. Defendant repeats and realleges all of the

allegations contained in paragraphs 19 through 41 and paragraphs 64 through 66 of this answer.

70. Upon information and belief, ISL and its agents and representatives knew or should have known that the financial statements described in paragraph 34 and the warranties and representations described in paragraphs 19 through 41 were false in several material respects including but not limited to:

(a) substantial overvaluation of current assets;

(b) substantial understatement of current liabilities; and

(c) substantial understatement of the reserve for bad debts with respect to accounts receivable.

71. The aforesaid false and fraudulent misrepresentations were intentional, wanton and malicious and done with the intention and for the purpose of injuring defendant.

72. Defendant, therefore, requests damages in the amount of $3,000,000 with interest and punitive damages in the amount of $3,000,000.

WHEREFORE, defendant respectfully requests judgment:

(a) dismissing the complaint in its entirety;

(b) with respect to its first counterclaim, rescinding the agreement of February 4, 1970, as amended and awarding damages in the amount of $3,000,000 with interest from March 2, 1970;

(c) with respect to its second counterclaim, awarding damages in the amount of $3,000,000 with interest from March 2, 1970;

(d) with respect to its third counterclaim, awarding actual damages in the amount of $3,000,000 with interest from March 2, 1970 and punitive damages in the amount of $3,000,000,

together with the costs and disbursements of this action, defendant's reasonable attorneys' fees and such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
November 22, 1972

ROYALL, KOEGEL & WELLS

By _____
A Member of The Firm
Attorneys for Defendant
200 Park Avenue
New York, New York 10017
Tel. No. (212) 972-7000

AGREEMENT dated the 9th day of February, 1970 by and between THE PLESSEY COMPANY LIMITED, a corporation organized and existing under the laws of England (hereinafter referred to as "PLESSEY") and INTERNATIONAL SCIENTIFIC LTD., a corporation organized and existing under the laws of Barbados, West Indies (hereinafter referred to as "ISL").

WHEREAS, ISL desires that all of its properties be sold to PLESSEY on the terms hereinafter set forth; and

WHEREAS, PLESSEY desires to acquire all of the properties of ISL on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained and other good and valuable considerations by each of the parties to the other in hand paid, receipt of which is hereby acknowledged, it is mutually agreed as follows:

1. ISL hereby agrees that, subject to the terms and conditions of this Agreement, ISL will sell, convey, transfer and deliver to PLESSEY, at the closing hereof, all of ISL's then existing assets and business including all of ISL's good will and its right to the use of its name. The assets so to be sold, conveyed, transferred and delivered shall include those owned by ISL on December 31, 1969 balance sheet with only such changes therein as shall have occurred in the ordinary course of ISL's business between December 31, 1969 and the closing, or otherwise as may be consented to or approved by PLESSEY in writing. Without limitation of the fore-

EXHIBIT A

going provisions, the aforesaid sale, conveyance and transfer shall include all of the following, if any: all of ISL's rights and interests in, to and under all patents, patent applications, trademarks, trademark registrations and applications therefor, copyrights, copyright registrations and applications therefor, issued or pending, all trade names, labels and other trade rights, whether or not registered, all inventions, discoveries, improvements, processes, formulae, trade secrets, ideas, and other know-how, whether patentable or not, and all shop rights, licenses and other agreements (including agreements with ISL's employees) relating in whole or in part to any of the foregoing.

2. PLESSEY hereby agrees that, at the closing, subject to the terms and conditions of this Agreement, and in consideration for the aforesaid sale, conveyance, transfer and delivery, PLESSEY will deliver to ISL a check for One Hundred and Eighty Thousand ($180,000.00) U.S.DOLLARS drawn by PLESSEY to ISL; and PLESSEY shall deliver to ISL an undertaking whereby PLESSEY assumes and agrees to pay, perform and discharge all debts, obligations, contracts and liabilities of ISL, whether accrued, absolute, contingent or otherwise but only if such debts, obligations, contracts and liabilities are reflected on the December 31, 1969 balance sheet of ISL, or if they were incurred in the ordinary course of ISL's business between December 31, 1969

and closing, provided, however, that PLESSEY shall not assume nor does it agree to pay any obligation evidenced by convertible debentures issued by ISL (other than interest provided therein to the closing hereof) nor any expenses of redemption or premiums which are necessitated by any such redemptions.

3. ISL hereby agrees that, at the closing, it will deliver to PLESSEY such deeds, bills of sale, endorsements, assignments, and other good and sufficient instruments of conveyance and transfer, in form satisfactory to PLESSEY'S counsel, Sinsheimer, Sinsheimer & Dubin, Esqs., as shall be effective to vest in PLESSEY good and marketable title to the assets and business to be sold, conveyed, transferred and delivered hereunder, all as provided in this Agreement, and all of ISL's contracts and commitments, books (except minute and stock books which shall be and remain available at all reasonable times for PLESSEY'S inspection), records and other data relating to its assets, business and operations, including, without limitation all its notebooks and other records relating to inventions, discoveries, improvements, processes, formulae, trade secrets, ideas, or other know-how whether patentable or not, and trademarks, tradenames or copyrights, whether registrable or not; and that, simultaneously with such delivery, all such steps will be taken as may be required to put PLESSEY in actual possession and operating control

of such assets and business. All such records, data and other documents shall remain available at all reasonable times for ISL's inspection.

4. ISL hereby agrees that, from time to time, at PLESSEY'S request and without further consideration, ISL will execute and deliver such other instruments of conveyance and transfer and take such other action as PLESSEY reasonably may require more effectively to convey, transfer to and vest in PLESSEY, and to put PLESSEY in possession of, any property to be sold, conveyed, transferred and delivered hereunder, and, in the case of contracts and rights, if any, which cannot be transferred effectively without the consent of third parties which is obtainable, ISL agrees to use its best efforts to assure to PLESSEY the benefit thereof. Nothing herein to the contrary, it shall be essential to the closing of this Agreement that ISL obtain and deliver to PLESSEY at the time of closing the consent by the Barbados government or its instrumentality to the assignment of ISL's lease to PLESSEY and to the continuation of all of the terms of that lease. It shall also be essential that ISL deliver at closing the consent by Granite Leasing Corp., or its appropriate affiliate, to the assignment of ISL's equipment leases to PLESSEY, an acknowledgment of PLESSEY'S right to obtain title to all of the equipment heretofore leased to ISL by Granite Leasing Corp. or its affiliate upon the

compliance by PLESSEY of all of the terms of the lease remaining to be performed, and an estoppel letter from Granite to the effect that all of the lessee's obligations to the date of closing have been performed.

5. Paragraph 6 hereof provides that ISL will be entitled to certain additional money depending upon the amount of profits derived from the assets being acquired hereby during the year commencing on the first day of the first calendar month after closing (hereinafter called "the measuring year"). In order to allow those assets to generate profits during the measuring year, PLESSEY hereby agrees that for that period it will:

a. Make available to the business within one week after closing funds totalling not less than Six Hundred Thousand ($600,000.00) U.S.Dollars;

b. Continue ISL'S business in good faith, itself or through a subsidiary,

c. Continue all agreements between ISL and sales representatives in the United States for the measuring year except for those agreements which are terminated for cause, and

d. The present management of ISL shall operate the business during the measuring year and shall have the maximum freedom to operate the business in a manner which will produce, in the judgment of such management, the maximum profit available provided, however, that any policy

directive issued by the directors of PLESSEY shall be complied with. Should PLESSEY propose any course of action which would be detrimental to attaining $360,000 profits during the measuring year ISL management shall have the option of requiring prior to commencement of such course of action that the net additional expenditure of ISL in pursuing such course over and above what it would have incurred if it had not pursued such course be excluded in determining profits. Notwithstanding the foregoing, if ISL profits commencing with the third calendar month of the measuring year average at least Fifteen Thousand ($15,000) U.S.Dollars per month and if there have not been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and PLESSEY shall have the right to assume full management responsibilities. In such event, however, PLESSEY shall be obligated to continue the business of ISL during the measuring year in good faith.

Should the ISL management and PLESSEY disagree whether any course of action be detrimental to attaining $360,000 profits during the measuring year and should the ISL management so notify PLESSEY prior to the commencement of that course of action, the course of action shall nevertheless be followed and the question as to whether it is or has been detrimental to attaining $360,000 profits during the measuring year shall be arbitrated by a national American

accounting firm acceptable both to ISL management and PLESSEY whose determination shall be final and binding. The expenses of the arbitration shall be paid as follows:

a) if the arbitrator determines that all of the proposed course of action was or would be detrimental to attaining $360,000 profits during the measuring year, the entire expense of the arbitration shall be borne by PLESSEY;

b) if the arbitrator determines that none or only some of the proposed course of action was or would be detrimental to attaining $360,000 profits during the measuring year, the expense of the arbitration shall be borne as follows:

i) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, exceed $360,000, the excess over $360,000 shall be multiplied by four and if the product thereof is sufficient to cover all arbitration expenses all such expenses shall be paid by PLESSEY;

ii) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, are less than $360,000, the expenses of arbitration shall be borne equally by PLESSEY and ISL. (Should PLESSEY advance any sums which should have been paid by ISL, PLESSEY may deduct a like amount from additional moneys earned by ISL according to Paragraph 6);

iii) if the profits during the measuring year, adjusted as may be required by reason of the arbitrator's determination, exceed $360,000 but not by a sufficient amount, as computed under subparagraph 5(b)(i), to cover all of the

expenses of arbitration, subparagraph 5(b)(i) shall be applied to the extent possible and subparagraph 5(b)(ii) shall apply to the balance of the expenses.

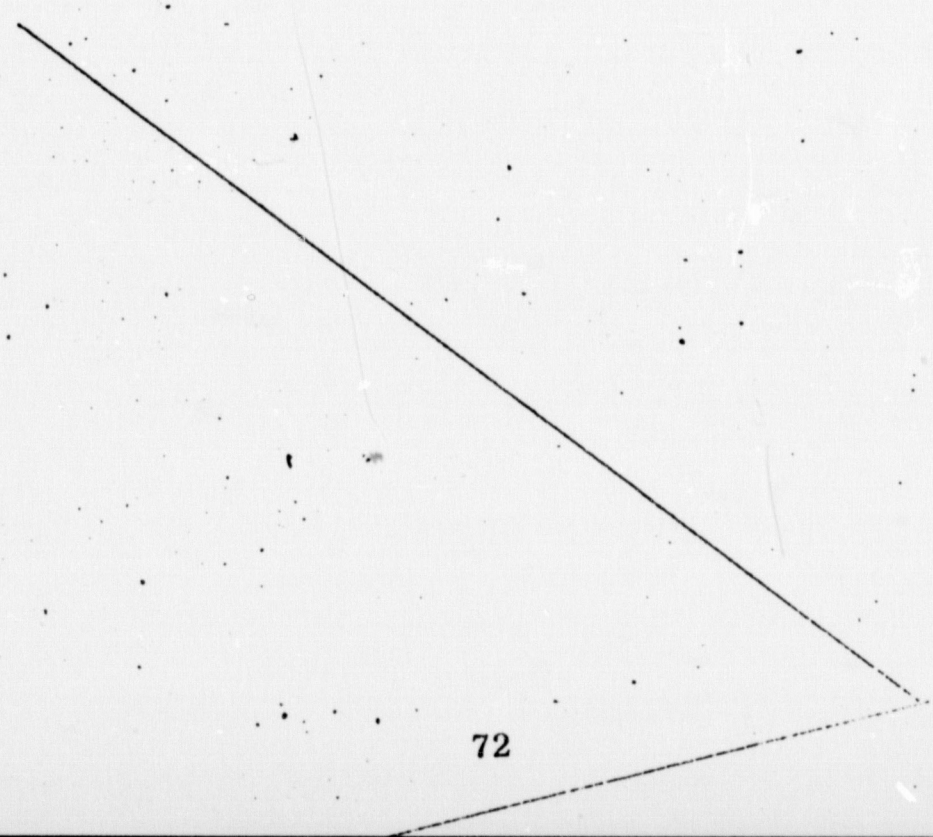
6. If during the measuring year the profits (as defined below) derived from the assets being acquired total Three Hundred and Sixty Thousand ($360,000.00) U.S.Dollars, or more, PLESSEY shall deliver to ISL not later than ninety (90) days thereafter a check in the amount of One Million Two Hundred and Sixty Thousand ($1,260,000.00) U.S.Dollars drawn to ISL. Should the profits be less than Three Hundred and Sixty Thousand ($360,000.00)U.S.Dollars during that period, PLESSEY shall deliver to ISL not later than ninety (90) days thereafter a check drawn to ISL,in an amount which bears the same ratio to One Million Two Hundred and Sixty Thousand ($1,260,000.00)U.S.Dollars that the amount of profits for the measuring year bears to Three Hundred and Sixty Thousand ($360,000.00)Dollars. If no additional money is payable or if the business shall be unprofitable ISL shall nevertheless be entitled to retain the One Hundred and Eighty Thousand ($180,000.00)U.S.Dollars paid to it at closing.

"Profit" as used in this paragraph 6 and in paragraph 5 is intended to and shall include only income or losses (before any taxes measured by income) actually generated by deployment of the assets of ISL such deployment being principally in the manufacture and sale of memory

planes and memory stacks, cable harnesses and other electrical assemblies, and shall not include income or losses resulting from changes in accounting methods, practices or procedures. Accordingly, profits shall be computed in accordance with generally accepted accounting principles applied consistently with those applied by ISL in the past except that:

A) There shall be no write down or charges to profits resulting from facts established to have occurred during years prior to the measuring year;

B) No charge shall be made to profit for any expense of PLESSEY such as managerial services or



additional or new accounting systems or any other services furnished or proposed to be furnished to ISL by PLESSEY which would not have been sustained by ISL had ISL continued the business during the measuring year unless ISL management agrees that any such charge for services shall be made to ISL;

C) Depreciation shall be charged on the same basis as charged heretofore by ISL utilizing the same useful lives and rates;

D) The cost of all research and development, training and engineering instituted by ISL management during the measuring year will be charged against profit as such costs are incurred;

E) Any sale generated by PLESSEY or made by ISL to PLESSEY shall be at the same prices charged by ISL to other customers except there shall be deducted 8% of Barbados f.o.b. prices for all sales generated by or made to PLESSEY for which no commission is to be paid to a salesrepresentative;

F) No charge shall be made against gross income for the cost of the funds made available to the business under the Paragraph 5(a) hereof;

G) As a general guide items of the nature shown as cost of doing business on the ISL proforma income statement which is attached hereto as Exhibit shall be considered proper charges against income for purposes of this Paragraph 6.

7. The closing of this transaction shall take place at a location in Bridgetown, Barbados, W.I., to be selected by PLESSEY at 10 A.M. on March 2, 1970. Either party, however, may by written notice to the other received not later than ten (10) days before that date postpone the closing to a date not beyond fourteen (14) days after the closing date fixed by this paragraph and PLESSEY may extend the closing to a date thirty (30) days after the closing date fixed by this agreement if the Bank of England approval has not as yet been received in accordance with Paragraph 19 hereof. If closing is not consummated because approval by the Bank of England has not been received within the period herein described, this Agreement shall terminate without liability of any kind on the part of either ISL or PLESSEY.

8. ISL hereby agrees that it will duly convene a meeting of the holders of its common stock to be held prior to the date of closing for the purpose of voting upon the sale of its assets in accordance with this Agreement and in order to change its name.

9. PLESSEY hereby agrees that it will take all such actions prior to the date of closing as may be required in order to acquire the assets of ISL on the terms provided in this Agreement.

10. ISL represents and warrants:

a. That ISL is a corporation duly organized, validly existing and in good standing under the laws of Barbados, W.I., and that it has corporate power to carry on its business as it is now conducted.

b. That the execution, delivery and performance of this Agreement by ISL, including, without limitation, the sale, conveyance, transfer and delivery contemplated hereby have been duly and effectively authorized by ISL's Board of Directors, subject to approval by its stockholders as required by law.

c. ISL has delivered to PLESSEY copies of the following financial statements, all of which are true and complete and have been prepared in accordance with generally accepted accounting principles consistently followed throughout the periods indicated:

(i) ISL's balance sheet as of December 31, 1968, certified by Price Waterhouse & Co. including the notes thereto, which balance sheet presents a true and complete statement as of its date of the financial condition and assets and liabilities of ISL;

(ii) The balance sheet of ISL as of December 31, 1969, attested to by

ISL's controller which, to the extent of ISL's knowledge, presents a true and complete statement as of its date of the financial condition and assets and liabilities of ISL;

(iii) A statement of ISL's profit and loss for the period from January 1, 1968 to December 31, 1968, certified by Price, Waterhouse & Co., including the notes thereto, which fully and accurately presents the results of ISL's operations for the period indicated, and

(iv) A statement of ISL's profit and loss for the period from January 1, 1969 to December 31, 1969, attested to by ISL's controller which, to the extent of ISL's knowledge, fully and accurately presents the results of ISL's operations for that period.

d. Except as and to the extent reflected or reserved against in ISL's balance sheets described above, ISL, as of the date thereof, had no liabilities or obligations (whether accrued, absolute, contingent or otherwise)

of a nature customarily reflected in a corporate balance sheet prepared in accordance with generally accepted accounting principles, including, without limitation, any tax liabilities due or to become due and whether

(i) Incurred in respect of or measured by ISL's income for any period prior to the close of business on December 31, 1969, or

(ii) Arising out of transactions entered into, or any state of facts existing, prior thereto.

e. Since December 31,1969, there has not been:

(i) Any change in ISL's financial condition, assets, liabilities or business,other than changes in the ordinary course of business,the sale of the property which has been the residence of E.Allan Kovar, and the writing off of approximately Twenty Thousand ($20,000.00) U.S.Dollars of testing equipment. Operating losses not at a rate in excess of Twenty Thousand ($20,000.00)U.S.Dollars per month for the period from December 31,1969 to the closing hereof shall not constitute an out of the ordinary change of ISL's condition;

(ii) Any declaration, setting aside or payment of any dividend or other distribution in respect of

ISL's capital stock;

(iii) Any increase in the compensation payable or to become payable by ISL to any of its officers or agents, any wage increases for employees who are considered direct labor, other than normal wage raises, or any increases of compensation payable or to become payable to other employees taken as a group in excess of Ten Thousand ($10,000.00) U.S.Dollars taken on an annual rate.

(iv) Any significant labor trouble or any other event or condition of any character which has materially and adversely affected ISL's business.

f. The accounts receivable shown on ISL's balance sheet of December 31, 1969, are, in the reasonable judgment of ISL, collectible in the aggregate amount shown on that balance sheet, less a reserve of $15,000.00.

g. The inventories of ISL shown on its balance sheet of December 31, 1969 or thereafter acquired by ISL prior to the date of this Agreement, consist of items of a quality and quantity useable in the normal course of ISL's business; the value of obsolete materials or of materials

below standard quality has been written down to realizable market value and the values at which such inventories are carried reflect ISL's normal inventory valuation policy of stating the inventory at cost, not in excess of market, all in accordance with generally accepted accounting principles.

h. ISL has good and marketable title to all of its assets free and clear of all liens and encumbrances except liens and encumbrances resulting from a lending agreement between ISL and the Canadian Imperial Bank, a copy of which is attached hereto as Exhibit . ISL has not received notice of violation of any applicable zoning regulation, ordinance or other law, order, regulation or requirement relating to its operations or to its owned or leased properties.

i. ISL will deliver to PLESSEY, at least fourteen (14) days before the date scheduled herein for closing, accurate lists and summary descriptions, certified by ISL to be correct to the best of its knowledge and belief, of the following:

(i) All real property owned of record or beneficially by ISL and a brief description of the principal buildings and structures located thereon, and all leases of real property to which ISL is a party;

(ii) A copy of the Notification of Approved Export Status issued to ISL by the Government of Barbados, W.I., or

its instrumentality.

(iii) Inventories of finished products and goods in process, materials, supplies, machinery and equipment, as recorded in ISL's books of account and reflected in its balance sheet of December 31, 1969.

(iv) If any, all United States and foreign patents, trademark and trade name registrations, copyrights and copyright registrations which will not have expired on the date of closing, all United States and foreign applications now pending for patents, trademarks or trade name registrations or copyright registrations.

(v) If any, all licenses granted by or to ISL and all other agreements to which ISL is a party which may be in force as of the closing hereof and which relate in whole or in part to any items of the categories mentioned in the subparagraph immediately above or to inventions, discoveries, improvements, processes, formulae, trade secrets, ideas or other know-how, or labels, whether

owned by ISL or otherwise;

(vi) All automobiles and trucks owned or leased (whether by written or oral agreements) by ISL;

(vii) All insurance policies in force with respect to ISL covering all of its assets and operations;

(viii) All existing contracts and commitments of ISL involving payment by ISL of more than $1,000.00 or extending beyond May 31, 1970, or otherwise materially affecting ISL's business, including all contracts made with sales representatives. Except as shown on this list, ISL is not in default under any such contract or commitment;

(ix) The names and current annual salary rates of all of ISL's officers and employees whose current annual salary rate is $10,000.00 or more, together with a copy of any salary plan or plan of fringe benefits paid or payable to such persons, and

(x) The name of each bank in which ISL has an account and the names of all persons authorized to draw thereon.

True and complete copies of all contracts, commitments or other agreements referred to above shall be delivered by ISL to Sinsheimer, Sinsheimer and Dubin, Esqs., 660 Madison Avenue, New York, New York, not later than fourteen (14) days prior to closing.

j. So far as is known to ISL, there is no litigation, proceeding or government investigation pending, threatened or otherwise relating to ISL or to its assets or business or to the transaction contemplated by this Agreement, nor is there any basis known to ISL for any such action other than a suit for wrongful discharge where the maximum exposure of ISL and the maximum exposure assumed by PLESSEY is one month salary of the plaintiff. ISL has made known to PLESSEY that it may pursue a purported cause of action against Data 100 Inc. which cause of action shall not be considered an asset of ISL for purposes of this Agreement.

k. All negotiations relative to this Agreement and the transaction contemplated hereby have been carried on by ISL directly with PLESSEY, without the intervention of any person as the result of any act of ISL (and, so far as known to ISL, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or any like payment.

11. PLESSEY hereby represents and warrants that it is a corporation duly organized and existing and in good standing under the laws of England. PLESSEY further represents and warrants that the negotiations relative to

this Agreement and the transactions contemplated hereby have been carried on by PLESSEY directly with ISL, without the intervention of any persons as the result of any act of PLESSEY (and, so far as known to PLESSEY, without the intervention of any other person) in such manner as to give rise to any valid claim against either of the parties hereto for a brokerage commission or any like payment.

12. ISL hereby agrees that, pending the closing and except as consented to by PLESSEY in writing:

a. ISL's business shall be conducted only in the ordinary course which shall not include the making of any commitment, other than normal sale and purchase commitments, extending beyond the date of closing other than with PLESSEY's written consent;

b. No dividend or other distribution or payment shall be made or paid in respect of its capital stock;

c. No increase shall be made in the compensation payable or to become payable by ISL to any officer or agent, to any employees who are considered direct labor other than normal wage raises or to any other employees, taken as a group, in excess of Ten Thousand ($10,000.00) U.S.Dollars taken on an annual basis.

d. ISL shall not increase its borrowings as shown on its December 31, 1969 balance sheet;

e. No change shall be made in the banking arrangements reflected in Paragraph 10 (i)(x) hereof;

f. ISL will use its best efforts to preserve its business organization, to keep available to PLESSEY the services of ISL's officers and employees and to preserve for PLESSEY the good will of ISL's suppliers, customers and others having business relations with it; and

g. ISL will duly comply with all laws applicable to it and to the conduct of its business.

13. All of PLESSEY's obligations under this Agreement are subject to the fulfillment, prior to or at closing, of each of the following conditions:

a. PLESSEY shall not have discovered any material error, mis-statement or omission in any of the representations and warranties made by ISL;

b. ISL's representations and warranties contained in this Agreement shall be deemed to have been made again as of the time of the closing and shall then be true in all material respects and ISL shall have performed and complied with all agreements required by this Agreement to be performed or complied with no later than closing;

c. The sale and transfer of its assets, business and good will and its change of name, as provided in this Agreement, shall have been approved by the holders of at least that percentage of ISL's outstanding stock as may be required under the laws of Barbados, W.I.;

d. PLESSEY shall have been furnished with

an opinion dated the closing date of counsel for ISL, Sonnenschein, Levinson, Carlin, Nath & Rosenthal, to the effect that:

(i) ISL is a corporation duly organized, validly existing and in good standing under the laws of Barbados, W.I.;

(ii) The execution, delivery and performance of this Agreement by ISL have been duly authorized and approved by all requisite action of ISL's Board of Directors and stockholders and that this Agreement has been duly executed and delivered by ISL and constitutes the valid and binding obligation of ISL in accordance with its terms;

(iii) Except as may be specified by such counsel, that they do not know of any litigation, proceeding or governmental investigation pending or threatened against or relating to ISL, its properties or business, or the transaction contemplated by this Agreement, or of any legal impediment

to the operation by PLESSEY of ISL's properties and business in the ordinary course.

e. PLESSEY shall have been furnished with evidence in form and substance satisfactory to PLESSEY to the effect that at the time of closing ISL had good and marketable title to the properties reflected on its balance sheet as of December 31, 1969, free and clear of all liens and encumbrances subject only to the exception mentioned in paragraph 10 above pertaining to a bank lending agreement and to any equipment leases where the covered equipment has been accounted on the ISL balance sheets as assets of ISL, and that the instruments of conveyance and transfer executed and delivered by ISL at the closing are valid in accordance with their terms and effectively vested in PLESSEY good and marketable title, subject only to the aforementioned exception, to all of the property of ISL and its business and good will as contemplated by this Agreement.

f. PLESSEY shall have received an opinion dated the closing of its counsel, J.I. NICHOLS & CO., to the effect that all of the instruments of conveyance and transfer being delivered by ISL to PLESSEY are satisfactory to them.

14. All of the obligations of ISL under this Agreement are subject to the fulfillment no later than closing of each of the following conditions:

a. ISL shall not have discovered any material error, mis-statement or omission in the representations and warranties made herein by PLESSEY.

b. PLESSEY'S representations and warranties contained in this Agreement shall be deemed to have been made again as at the time of closing and shall be true in all material respects and PLESSEY shall have complied with all agreements and conditions required by this Agreement to have been performed or complied with no later than closing.

c. PLESSEY shall have delivered to ISL an opinion dated the closing date of PLESSEY'S counsel, Herbert Oppenheimer, Nathan & Vandyk, to the effect that:

(i) PLESSEY is a corporation duly organized and existing and is in good standing under the laws of England;

(ii) The execution, delivery and performance of this Agreement by PLESSEY have been duly authorized and this Agreement has been duly executed and delivered by PLESSEY and constitutes the valid and binding obligation of PLESSEY in accordance with its terms;

(iii) The undertaking provided for in Paragraph 2 hereof has been duly executed and delivered and is binding and effective according to its terms.

15. Should PLESSEY notify ISL at least fourteen (14) days prior to the closing hereof that it elects to have ISL comply with or join with PLESSEY in complying with any bulk sale procedures it considers applicable hereto, ISL shall take all steps appropriate thereto.

16. PLESSEY may assign this Agreement to a subsidiary corporation, in which event PLESSEY'S sole obligations hereunder shall be to make available to its subsidiary sufficient money as may be required to be paid to ISL under the terms of this Agreement, to make available as provided above the sum of Six Hundred Thousand ($600,000.00) Dollars for the operation of the business during the measuring year and to deliver its undertaking as provided in Paragraph 2 hereof.

17. Should any representations or warranties by ISL prove to be inaccurate or untrue, PLESSEY may, in addition to any other remedies available to it, diminish any further payments to ISL by an amount sufficient to cover the damage sustained by reason of the misrepresentation or breach of warranty.

18. It is expressly understood by ISL that this Agreement is subject to the approval of the Bank of England. PLESSEY shall use all reasonable efforts to obtain such approval.

19. This agreement shall be interpreted under and governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day first above written.

THE PLESSEY COMPANY LIMITED

By _____

INTERNATIONAL SCIENTIFIC LTD.

By _____

660 MADISON AVENUE, NEW YORK, N. Y. 10021

February 4, 1970

Julius Lewis, Esq.
Sonnenschein Levinson Carlin
Nath & Rosenthal
The Brunswick Building
69 West Washington Street
Chicago, Illinois 60602

Re: Plessey with ISL

Dear Julius:

This will confirm our understanding concerning two points which have not been included in the acquisition agreement between Plessey and ISL:

1. In the event that the Bank of England declines permission for The Plessey Company Limited to make the acquisition described in the agreement, we will seek the bank's permission instead for the acquisition to be made by Plessey Incorporated in which event Plessey Incorporated shall be substituted throughout the agreement for The Plessey Company Limited.

2. It is a condition to closing that the obligation of Mr. Johnson to ISL shall have been paid, and that the related obligation to the bank shall have been reduced by a like amount.

I shall give some thought to the method by which we will close and I will be in touch with you about next week.

Enclosed is a copy of the agreement which Allan Kover signed today. I have asked our people in England to affix the corporate seal to a copy of the agreement which I will send to Allan as soon as I have it. Inaddition, I have asked them to start doing whatever has to be done to get the approval from the Bank of England.

Would you please sign the enclosed copy of this letter indicating your agreement to the two points above and return the signed copy to me.

Sincerely,

Seth H. Rubin

SHR:sr
Enclosures

AGREED:

COPY

ONLY COPY AVAILABLE

ONNENSCHEIN LEVINSON CARLIN NATH & ROSENTHAL
69 WEST WASHINGTON STREET, CHICAGO, ILL. 60602
TELEPHONE ANdover 3-6400

February 18, 1970

Seth H. Dubin, Esq.
Sinsheimer, Sinsheimer and Dubin
660 Madison Avenue
New York, New York 10021

Dear Seth:

This will acknowledge our understanding that the Agreement dated February 4, 1970, between your client, The Plessey Company Limited, and our client, International Scientific Limited, is modified in the two following respects:

1. International Scientific Limited consents to the substitution of Plessey Incorporated, a Delaware corporation, for The Plessey Company Limited wherever the name of The Plessey Company Limited appears in the contract.

2. Paragraph 5d in the Agreement as signed inaccurately expressed the understanding of the parties and should read as follows:

d. The present management of ISL shall operate the business during the measuring year and shall have the maximum freedom to operate the business in a manner which will produce, in the judgment of such management, the maximum profit available provided, however, that any policy directive issued by the directors of PLESSEY shall be complied with. Should PLESSEY propose any course of action which would be detrimental to attaining $360,000

NNENSCHEIN LEVINSON CARLIN NATH & ROS...THAL
0 WEST WASHINGTON STREET, CHICAGO, ILL. 60602
TELEPHONE ANdover 3-6400

profits during the measuring year ISL management shall have the option of requiring prior to commencement of such course of action that the net additional expenditure of ISL in pursuing such course over and above what it would have incurred if it had not pursued such course be excluded in determining profits. Notwithstanding the foregoing, if ISL profits commencing with the third calendar month of the measuring year average less than Fifteen Thousand ($15,000) U.S. Dollars per month or if there have been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and PLESSEY shall have the right to assume full management responsibilities. In such event, however, PLESSEY shall be obligated to continue the business of ISL during the measuring year in good faith.

Your signature on a copy of this letter will acknowledge the assumption by Plessey Incorporated of all the obligations of The Plessey Company Limited under the Agreement and that Plessey Incorporated will have all of The Plessey Company Limited rights under the Agreement.

Your signature will also acknowledge that paragraph 5d shall forthwith be deemed amended to read as it does in this letter.

Very truly yours,

SONNENSCHEIN LEVINSON CARLIN
NATH & ROSENTHAL

By Julius Lewis
Julius Lewis

ACCEPTED AND AGREED TO
THIS 20th DAY OF
February, 1970

Levinson Sonnenschein Dubin
by Seth H Dubin
Attorney for
The Plessey Company Limited
and Plessey Incorporated

To avoid any misunderstanding concerning the terms of the agreement between P The Plessey Company Limited and International Scientific Ltd. dated February 4, 1970, it is understood by International Scientific Ltd. and Plessey Incorporated (which was substituted for the Plessey Company Limited by a modification agreement dated February 18, 1970) that the obligations of Plessey Incorporated to make funds available under Paragraph 5 shall be deemed satisfied to the extent that moneys are paid by Plessey Incorporated to creditors of International Scientific Ltd. pursuant to Paragraph 2 or to the undertakings given pursuant thereto.

Bridgetown, Barbados, W.I.
March 2, 1970

PLESSEY INCORPORATED

By _____
Vice President

INTERNATIONAL SCIENTIFIC LTD.

By _____
Director

March 2, 1970.

International Scientific Limited,
Seawell Industrial Park,
Christ Church,
Barbados, W.I.

Dear Sirs:

This will acknowledge our further understanding with regard to the Agreement dated February 4, 1970 between your company and The Plessey Company Limited, which Agreement was thereafter modified on February 18, 1970. One of the effects of that later modification having been to substitute Plessey, Inc. for The Plessey Company Limited as a party.

It is now agreed that:

(1) With regard to monies which Plessey, Inc. is obligated to make available to the business pursuant to Para. 5 (A) of the February 4, 1970 Agreement, there shall be no charge in computing profits pursuant to Para. 6 of that Agreement for the first $600,000 made available, there will be a charge at the rate of 10% per annum for the next $200,000 made available to the business and no further charge in computation of profits under Para. 6 shall be made for any additional monies made available to the business. The determination as to whether monies beyond $600,000 which Plessey shall be made available by is obligated to make available shall be made by Plessey alone.

(2) The modification Agreement dated February 18, 1970 with reference to the right by Plessey to assume full management responsibilities on the occurrence of certain events is hereby further modified so that if the profits of ISL commencing May 1, 1970 (crediting to the month of May the net profits of the 2-month period comprised of March and April, 1970, but not charging any net loss for that period) average less than $ 15,000 per month, or if there have been three consecutive months of losses during

that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and Plessey shall have the right to assume full management responsibilities. In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in good faith.

Yours truly,

PLESSEY INCORPORATED

By Milton H. Gilbert

INTERNATIONAL SCIENTIFIC LIMITED

By [signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation, Plaintiff,	)	CIVIL ACTION
vs.	)	No.
PLESSEY INCORPORATED, a Delaware corporation, Defendant.	)	JURY DEMANDED

ANSWER TO COUNTERCLAIMS

Plaintiff, SCIENTIFIC HOLDING COMPANY, LTD., by its attorneys, hereby answers the counterclaims of defendant, PLESSEY INCORPORATED, as follows:

FIRST COUNTERCLAIM

1. It admits the allegations contained in paragraph 19 of the First Counterclaim.

2. It admits that its agents furnished English Plessey with certain financial and other operating information in furtherance of negotiations respecting purchase of ISL assets by Plessey but denies each and every remaining allegation in paragraph 20 of the First Counterclaim.

3. It denies the allegations contained in paragraph 21 of the First Counterclaim.

4. It denies the allegations contained in paragraph 22 of the First Counterclaim.

5. With respect to paragraph 23 of the First Counterclaim, it admits that English Plessey entered into an agreement with ISL to purchase the business and assets of ISL but denies that English Plessey entered into such agreement in reliance upon the financial statements and representations alleged and answering further states that English Plessey was given full access to ISL's books and records and made its own independent investigation and assessment of the business and financial condition of ISL on which it relied and that in fact, English Plessey agreed to purchase ISL as a vehicle for Plessey's entry into the U. S. memory market and in furtherance of a master plan, unknown to ISL, conceived as early as September, 1969. Acquisition of ISL afforded Plessey a unique opportunity to purchase a going concern with an existing sales agency force which according to English Plessey's own estimate would permit it to obtain the envisioned 5% share of the U. S. memory market at least a year earlier than if it were "to start from scratch" and in these circumstances ISL's financial condition was irrelevant insofar as the agreement to purchase; it only had a bearing on the purchase price and as to this there was an adjustment clause in the purchase agreement to the extent net assets were overstated (¶17).

6. It admits that paragraph 24 of the First Counterclaim accurately states the wording of paragraph 10(b) of the Agreement of purchase and sale but answering further states that by fraud and duress Plessey coerced ISL representatives to agree to an unauthorized amendment to the Agreement attached as Exhibit A to Plessey's Answer and Counterclaim.

7. Paragraph 10(c) of the Agreement speaks for itself and Plessey's characterization of that paragraph contained in paragraph 25 of its First Counterclaim requires no answer.

8. Paragraph 10(d) of the Agreement speaks for itself and Plessey's characterization of that paragraph contained in paragraph 26 of its First Counterclaim requires no answer.

9. Paragraph 10(e) of the Agreement speaks for itself and Plessey's characterization of that paragraph contained in paragraph 27 of its First Counterclaim requires no answer.

10. It admits the allegations contained in paragraph 28 of the First Counterclaim.

11. Paragraph 10(g) of the Agreement speaks for itself and Plessey's characterization of that paragraph contained in paragraph 29 of its First Counterclaim requires no answer.

12. Paragraph 13(b) of the Agreement speaks for itself and Plessey's characterization of that paragraph contained in paragraph 30 of its First Counterclaim requires no answer.

13. It admits the allegations contained in paragraph 31 of the First Counterclaim and answering further states that English Plessey already had been given full access to ISL's books and records from which it made its own independent assessment of ISL's financial condition, and had been authorized by ISL to review all ISL financial matters with the independent auditors previously and then involved in the official audit of such records.

14. It admits the allegations contained in paragraph 32 of the First Counterclaim.

15. It admits the allegations contained in paragraph 33 of the First Counterclaim.

16. It denies the allegations contained in paragraph 34 of the First Counterclaim.

17. It denies each and every allegation contained in paragraph 35 of the First Counterclaim.

18. It is without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the First Counterclaim, except that it avers that Plessey's representatives were given complete access to ISL's financial books and operating results both before and at the closing.

19. It is without knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the First Counterclaim.

20. It denies each and every allegation contained in paragraph 38 of the First Counterclaim.

21. It denies each and every allegation contained in paragraph 39 of the First Counterclaim.

22. It denies each and every allegation contained in paragraph 40 of the First Counterclaim and answering further states that Plessey, knowing that the then current financial condition of ISL was such that it had cash just sufficient to keep operating until the March 2 closing date, used the duress and threat of canceling the agreement to coerce ISL's representatives into an unauthorized modification of the Agreement in order to enable Plessey to take over management of ISL and thereafter integrate ISL's assets into Plessey's worldwide memory operations.

23. It admits that the wording purporting to be an amendment to paragraph 5(d) of the Agreement is correct and was included as an amendment as alleged in paragraph 41 of the First Counterclaim but denies that said purported amendment was or is valid because it was extracted under duress and the ISL representatives were without authority to agree to such an amendment.

24. It denies each and every allegation contained in paragraph 42 of the First Counterclaim and answering fuether states ISL's representatives specifically stated that they lacked authority to agree to the modification sought inasmuch as it

amounted to a fundamental change in the agreement approved by the ISL shareholders and directors.

25. It denies each and every allegation contained in paragraph 43 of the First Counterclaim and answering further states that ISL representatives did in fact make known their lack of authority to agree to the amendment to paragraph 5(d) of the Agreement.

26. It denies each and every allegation contained in paragraph 44 of the First Counterclaim.

27. It avers that paragraph 45 of the First Counterclaim requires no answer.

FIRST DEFENSE TO FIRST COUNTERCLAIM

The counterclaim fails to state a claim upon which relief can be granted.

SECOND DEFENSE TO FIRST COUNTERCLAIM

The recission of the Agreement prayed for is impossible because Plessey, upon assuming control pursuant to the void amendment extracted under duress and without authority, dismembered the operation, discharged ISL management personnel and otherwise so altered the business of ISL that restoration of the status quo cannot be achieved.

SECOND COUNTERCLAIM

1. In answer to paragraph 63 of the Second Counterclaim, SHC incorporates herein by reference each and every response to paragraphs 19 through 41 of its answer to Plessey's First Counterclaim.

2. It denies that Plessey ever possessed a right to cancel the agreement and therefore could not have and did not waive such a purported right.

3. It is without knowledge sufficient to form a belief as to the truth of the matter contained in paragraph 65 of the Second Counterclaim and demands strict proof thereof.

4. It denies each and every allegation contained in paragraph 66 of the Second Counterclaim.

5. It denies each and every allegation contained in paragraph 67 of the Second Counterclaim.

6. It avers that paragraph 68 of the Second Counterclaim requires no answer.

FIRST DEFENSE TO SECOND COUNTERCLAIM

The counterclaim fails to state a claim upon which relief can be granted.

THIRD COUNTERCLAIM

1. In answer to paragraph 69 of the Third Counterclaim, SHC incorporates herein by reference each and every response to paragraphs 19 through 41 of its answer to Plessey's First Counterclaim and paragraphs 64 through 66 of its answer to Plessey's Second Counterclaim.

2. It denies each and every allegation contained in paragraph 70 of the Third Counterclaim.

3. It denies each and every allegation contained in paragraph 71 of the Third Counterclaim.

4. It avers that paragraph 72 of the Third Counterclaim requires no answer.

FIRST DEFENSE TO THIRD COUNTERCLAIM

The counterclaim fails to state a claim upon which relief can be granted.

McCONNELL, MAHON & Borst

BY _____
Francis J. McConnell

SILBERFELD, DANZIGER & BANGSER

BY _____
Robert J. Blum

Attorneys for Plaintiff,
SCIENTIFIC HOLDING COMPANY, LTD.

Of Counsel:

McConnell, Mahon & Borst
134 South LaSalle Street
Chicago, Illinois 60603
312-726-9131

Silberfeld, Danziger & Bangser
230 Park Avenue
New York, New York 10017
212-889-8400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING CO.,

Plaintiff, : 72 Civil 1040(DNB)

-against- : JUDGMENT

PLESSEY, INC., :

Defendant.

The issues in the above entitled action having been brought on regularly for trial before the Honorable Dudley B. Bonsal, United States District Judge, and a jury on March 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 25, 26 and 27, 1974, and the Court having submitted the attached special verdict to the jury, and the jury having answered the special verdict as indicated thereon, and the jury having returned the special verdict in favor of the defendant dismissing the complaint, and the jury having also returned the special verdict in favor of the plaintiff dismissing the counterclaims of the defendant, and the Court having directed the entry of judgment, it is,

ORDERED, ADJUDGED AND DECREED, that defendant, PLESSEY, INC., have judgment against the plaintiff, SCIENTIFIC HOLDING CO., dismissing the complaint, and it is further,

ORDERED, ADJUDGED AND DECREED, that the plaintiff, SCIENTIFIC HOLDING CO., have judgment against the defendant, PLESSEY, INC., dismissing the counterclaims.

Dated: New York, N. Y.
March 29, 1974

Raymond F. Burghardt 3/29/74
Clerk

APPROVED: 3/27/74
D. B. Bonsal
United States District Judge

#-2399 - Bill of costs taxed in the sum of $3,481.80 in favor of the defendant, and added to the judgment.

Raymond F. Burghardt
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

SCIENTIFIC HOLDING COMPANY, LTD.,
an Illinois corporation,

Plaintiff-
Appellee,

vs.

DBB

72 Civ. 4040

PLESSEY INCORPORATED, a Delaware
corporation,

Defendant-
Appellant.

- X

NOTICE OF APPEAL

Notice is hereby given that Scientific Holding Company, Ltd., plaintiff in the above-entitled cause, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of the District Court directing a verdict on and withdrawing from the jury the issue of the validity of the March 2 amendment and from the final order entered March 27, 1974 denying plaintiff's motion for a new trial.

DATED: April , 1974

Francis J. McConnell
Attorney for Plaintiff

Of Counsel:

McConnell, Mahon & Borst
134 South LaSalle Street
Chicago, Illinois 60603
312-726-9131

for the

SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING COMPANY, LTD. an Illinois corporation, Plaintiff, vs. PLESSEY INCORPORATED, a Delaware corporation, Defendant.

DBB

CIVIL ACTION FILE NO. 72 Civ. 4040

Judgment having been entered in the above entitled action on the 29th day of March, 19 74, against plaintiff Scientific Holding Company, Ltd. the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$ 2.00
Fees of the marshal	
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	5006.80
Fees and disbursements for printing	
Fees for witnesses (itemized on reverse side)	4439.80
Fees for exemplification and copies of papers necessarily obtained for use in case	
Docket fees under 28 U. S. C. 1923	
Costs incident to taking of depositions	1918.00
Cost as shown on Mandate of Court of Appeals	
Other Costs (Please itemize)	
Total	$ 11,366.60

State of NEW YORK
County of NEW YORK } ss:

I, JOHN B. KOEGEL do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day ~~mailed~~ served upon Silberfeld, Danziger & Bangser, attorneys for ~~with postage fully prepaid thereon~~ plaintiff

Please take notice that I will appear before the Clerk who will tax said costs on April 23, , 19 74 at 11:00 A.M.

John B. Koegel

ROGERS & WELLS, Attorneys for Defendant Plessey Incorporated

Subscribed and sworn to before me this 22 day of April, A. D. 19 74 at New York, New York

Notary Public.

Costs are hereby taxed in the amount of $, 19 , and that amount included in the judgment. day of

Clerk.

By Deputy Clerk.

ONLY COPY AVAILABLE

Witness Fees (computation, cf. 28 U. S. C. 1821 for statutory fees)

Name and Residence	Attendance Days	Attendance Total Cost	Subsistence Days	Subsistence Total Cost	Mileage Miles	Mileage Total Cost	Total Cost Each Witness
Keith P. Jones	4	80	3	48	*	511	639.00
Anthony Ellis	3	60	2	32	**	997	1089.00
Dale Osborn	1	20	1	16	678	135.60	171.60
Connie Vangelakos	1	20	1	16	678	135.60	171.60
Richard F. Gendron	1	20			37	7.40	27.40
Donald Ballantyne	4	80	4	64	2863	572.60	716.60
David Gretton	19	380	19	304	2863	572.60	1256.60
Milton H. Albert	2	40			65	26.00	66.00
George White	1	20	1	16	1330	266.00	302.00
Seth H. Dubin	1	20					
* Actual Fare N.Y. - Barbados ** Actual Fare N.Y. - London							
					TOTAL		$4439.80

NOTICE

Section 1924, Title 28, U. S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

See also Section 1920 of Title 28 which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

"Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but cost against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court."

Rule 6 (e)

"Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period."

Rule 58 (In Part)

"The entry of the judgment shall not be delayed for the taxing of costs."

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation, Plaintiff, -against- PLESSEY INCORPORATED, a Delaware corporation, Defendant.	DBB 72 Civ. 4040 OBJECTIONS TO PROPOSED BILL OF COSTS

TO THE CLERK OF THE UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK:

The undersigned, attorneys for SCIENTIFIC HOLDING COMPANY, LTD., plaintiff herein, object to the proposed Bill of Costs, as served upon the undersigned by MESSRS. ROGERS & WELLS, attorneys for PLESSEY INCORPORATED, defendant, on April 22, 1974, as follows:

1. The entire Bill of Costs is objected to, because defendant was not the prevailing party.

2. The item of $5,006.80 sought as fees of the court reporter should be disallowed because:

a. No transcript was necessary for use in the case.

b. It is believed that the amount proposed to be taxed includes a copy for defendant, and also is based upon daily copy rates. The former is not allowable; and daily copy was neither required for this jury trial nor agreed upon by the parties.

3. The item of $4,439.80 included as fees for witnesses is objectionable, as follows:

a. The witnesses Gretton, Dubin and Gendron are employees or directors of defendant or members of its corporate family, and must be deemed parties.

b. The "witnesses" White and Ellis never testified.

c. The mileage fees of the witnesses Jones, Ellis, Osborn, Vangelakos, Ballantyne, Gretton, Albert and White are incorrectly computed, both as to distance and as to rate per mile.

d. The attendance and subsistence amounts claimed for the witnesses Jones, Ellis, Ballantyne, Gretton, Albert, White and Dubin are excessive as to number of days involved.

4. The item of $1,918.00 included as costs of taking depositions is objectionable, as follows:

a. The depositions in question were seldom used and were employed in minor ways only.

b. The proposed costs include at least one copy, as well as the original; charges for copies are proper.

WHEREFORE, it is respectfully requested that the Bill of Costs be disallowed in its entirety or, in the alternative, reduced to the amounts properly applicable as aforesaid.

SILBERFELD, DANZIGER & BANGSER
Attorneys for Plaintiff

By_____
a Partner

To: ROGERS & WELLS
Attorneys for Defendant
300 Park Avenue
New York, N. Y. 10017

Form A. O. 133 (1-63) BILL OF COSTS

MR MALONEY

United States District Court

for the

SOUTHERN DISTRICT OF NEW YORK

Docket as Judgt. #74,379

U.S. DISTRICT COURT FILED APR 23 1974 S. D. OF N.Y.

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation, Plaintiff,

vs.

PLESSEY INCORPORATED, a Delaware corporation, Defendant.

DBB

CIVIL ACTION FILE NO. 72 Civ. 4040

Judgment having been entered in the above entitled action on the 29th day of March, 19 74, against plaintiff Scientific Holding Company, Ltd. the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	$ ~~2.00~~ disallowed
Fees of the marshal	objected to
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	~~500.00~~ disallowed
Fees and disbursements for printing	1563.40
Fees for witnesses (itemized on reverse side)	~~419.00~~
Fees for exemplification and copies of papers necessarily obtained for use in case	
Docket fees under 28 U. S. C. 1923	
Costs incident to taking of depositions	1918.00
Cost as shown on Mandate of Court of Appeals	
Other Costs (Please itemize)	
Total	$ ~~11,266.60~~ 3,481.40

State of NEW YORK
County of NEW YORK } ss:

I, JOHN B. KOEGEL do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day ~~mailed~~ to served upon Silberfeld, Danziger & Bangser, attorneys for with postage ~~fully prepaid thereon~~ plaintiff

Please take notice that I will appear before the Clerk who will tax said costs on April 23, , 19 74 at 11:00 A.M.

John B. Koegel

ROGERS & WELLS, Attorneys for Defendant Plessey Incorporated

Subscribed and sworn to before me this 22 day of April, A. D. 1974 at New York, New York

Notary Public. No. 03-[illegible] Qualified in [illegible] County Certificate filed in [illegible] County Commission Expires [illegible]

Costs are hereby taxed in the amount of $ 3,481.40 this 23 day of April, 19 74, and that amount included in the judgment.

Raymond F. Burghardt
Clerk.

110 By Maria Arnaldo
Deputy Clerk.

4- Bill of Costs as taxed for the amount of $ 3,481.40 in favor of the defendant, and against the plaintiff.
Raymond F. Burghardt
Clerk

Witness Fees (computation, cf. 28 U. S. C. 1821 for statutory fees)

Name and Residence	Attendance Days	Attendance Total Cost	Subsistence Days	Subsistence Total Cost	Mileage Miles	Mileage Total Cost	Total Cost Each Witness
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Anthony Ellis	~~3~~ 8	~~60~~ 20	2	~~22~~ 16	**	997	30.00 ~~1069.00~~
Dale Osborn	1	20	1	16	678	135.60	40.00 ~~171.60~~
Connie Vangelakos	1	20	1	16	678	135.60	40.00 ~~171.60~~
Richard F. Gendron	1	20			37	7.40	27.40
Donald Ballantyne	~~1~~	80	4	64	2863	572.60	40.00 ~~716.60~~
David Gretton	19	380	19	304	2863	572.60	40.00 ~~1256.60~~
Milton H. Albert	2	40			65	26.00	66.00
George White	1	20	1	16	1330	266.00	40.00 ~~302.00~~
Seth H. Dubin	1	20					

* Actual Fare N.Y. - Barbados
** Actual Fare N.Y. - London

					TOTAL	$~~1422.00~~ 563.40

NOTICE

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Rule 58 (In Part)

"The entry of the judgment shall not be delayed for the taxing of costs."

Filed 5-3-74

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

SCIENTIFIC HOLDING COMPANY, LTD., an Illinois corporation,

Plaintiff,

-against-

PLESSEY INCORPORATED, a Delaware corporation,

Defendant.

DBB

72 Civ. 4040

NOTICE OF CROSS-APPEAL

- -x

S I R S :

Notice is hereby given that Plessey Incorporated, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the final judgment dated, entered and filed in this action on March 29, 1974 which dismissed defendant's counterclaims.

Dated: New York, New York
May 3, 1974

Yours, etc.

ROGERS & WELLS

By William F. Kogel
A Member of the Firm

Attorneys for Defendant
200 Park Avenue
New York, New York 10017

TO:

SILBERFELD, DANZIGER & BANGSER
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017

CLERK of the above-named Court
Federal Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

SCIENTIFIC HOLDING COMPANY, LTD., :

Plaintiff, : 72 Civ. 4040

vs. :

PLESSEY INCORPORATED, :

Defendant. :

- x

March 7, 1974,
10 A.M.

Before:

Dudley B. Bonsal,
District Judge and a Jury.

APPEARANCES:

Messrs. McConnell, Mahon & Borst
Attorneys for Plaintiff
134 South LaSalle Street
Chicago, Illinois
By: John McConnell, Esq., of Counsel.

Messrs. Rogers & Wells,
Attorneys for Defendant
200 Park Avenue
New York, N.Y.,
By: James Maloney, Esq.,
John B. Koegel, Esq., of Counsel.

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(A jury of six and one alternate were duly impaneled and sworn.)

(In open court; jury present.)

THE COURT: I think it might be more convenient, ladies and gentlemen, if Mrs. Negrin and the two gentlemen next to her move back on the second row. I think you will all hear better. Would you do that. I think you will hear the witnesses better that way.

Now, ladies and gentlemen, the first stage of the trial are the openings of the lawyers and this is their opportunity to address you and to indicate to you what the case is all about and what they think the evidence in this case will show.

Remember, as I told you before the recess, the evidence in the case is what you hear from that witness stand and any exhibits which may be received in the course of the trial, what the lawyers say isn't evidence and what I say isn't evidence, but it is helpful to give the lawyers this opportunity to address you and to tell you what it is all about and what they think the evidence will show. That is the purpose of the openings of the lawyers.

All right, Mr. McConnell, you may proceed.

MR. McCONNELL: Judge Bonsal, ladies and

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gentlemen of the jury:

As Judge Bonsal has just said, what I am going to say to you now is not evidence in the case, but merely what we think the proofs will show. But it is helpful and especially in a case of this complexity that you have in summary form, at least, our version of the case and what we think the proofs will show.

Then when you actually hear the evidence or see the documents or they are read to you in the course of the examination of the witness, it will be easier to fit that piece of evidence into the overall picture.

Now, briefly, this is a breach of contract action and a fraud action. The plaintiff here is Scientific Holding Company, which we will sometimes refer to as SHC.

The predecessor company, which was the company really involved here, was ISL, or International Scientific Limited.

The defendant is Plessey, which is a multi-national conglomerate.

Let me give you a little background on this company. ISL, the plaintiff company, was formed in 1966 or 1967 by a group of individuals, investors, to manufacture memory components from a facility located at Barbados.

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The products involved here are what are called memory planes and memory stacks. Very simplistically, a memory is a core where information is stored and from which it can be retrieved. These cores are strung together in what is called a plane. Then if you have got a series of planes they can be stacked one on top of the other and that gives you what is called a memory stack.

They are used for storing information in connection with computers or what is sometimes referred to as peripheral equipment in the trade.

In addition, this company did other electronic work. Stringing up cable harnesses and other electronic sub-assembly work.

The company, as I say, was started back in 1966 or 1967 and an arrangement was worked out with the government of Barbados to build a plant, a facility, out of which to manufacture these products..

Of course, the reason for an offshore facility of this type was because of the labor savings. I think at that time the labor rate for Barbados labor was something like 25 cents or 35 cents an hour so you can readily see the difference compared with you. Hourly rates and the potential savings.

But there was more to it than just building

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a plant. The labor force had to be trained because this was skilled or semi-skilled work in stringing these tiny, you can hardly see them, I mean hundreds, hundreds of thousands would fit in a test tube, these little cores, these little donut cores, and the stringing of them requires a degree of skill and dexterity. So a labor force had to be trained.

That was done and this business was built from scratch and customers were obtained. The customers that we were selling to were primarily computer manufacturers or manufacturers of what is called peripheral equipment or terminal equipment such as Honeywell, IBM, Hewlett Packard and others in that field.

We established a sales force to call on this trade and to obtain orders for memory planes and memory stacks and that sales force consisted of sales representatives located throughout the United States in the various major computer centers, such as Boston, New York, Chicago, California, I think we had a representative in Phoenix and another in Texas.

Like any fledgling business there were a lot of problems in getting started and one of those problems was not enough cash. The business was probably under-capitalized from the beginning and it is a problem of

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whether or not to sell more stock in the business and dilute the interest of the original investors or whether to raise funds by issuing bonds or notes or debentures of the company or to go to the banks to get loans.

Our cash problem necessarily resulted in other problems because, if you didn't have the money to pay for the raw material, then the suppliers put on you on a COD basis and that held up production and if production is held up, sales and deliveries are held up and it is one of those snowballing things.

And by the summer of 1969, I think the evidence will show, that we were in a serious cash flow shortage situation. We just didn't have the cash that was needed to run this business.

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But by that time we had already built up substantial orders on the books. We had, I think the evidence will show, the principle, really key computer customers in the United States market, and in some instances we were the sole supplier, which is a very preferred position to be in. So although the business had lost money from its inception, the business had great potential value to anybody that was in this field. And we had entry with the key United States computer customers.

At the same time we were approaching this cash crisis, so to speak, plus he was making plans to enter the United States memory market.

At the time Plessey itself had many and varied interests, but it was also in the electronic business and the memory business. Plessey had a plant in Malta and they had a plant in Lisbon. In the Fall of 1969 they drew up a plan, which is to be referred to as the matrix plan. Matrix is their word for like a grid, and it referred to this memory business. They drew up a plan for entering the United States market.

That plan called for a sales force located state-side in the United States with all marketing functions there. It called for a prototype design. Usually, the sequence is you go to the customer and try to get an order

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for "X" number of memory stacks, and they say, "Let's see a prototype;build us a sample of what you are going to produce on a production basis and submit that." And they look at it and they test it, and if it is okay they give you a pilot run, let's say maybe a hundred memory stacks, and if that goes through okay, they say, "All right, you are now hired for the production run," and that could be several hundreds or thousands of these memory stacks.

This matrix plan of Plessey called for the prototype engineering design functioning to be located in the United States. It also called for an off-shore facility which would be essentially an assembly-type operation, which was the nature of the operation that Plessey had at both Malta and Lisbon. They simply assembled the stacks there, but all other functions connected with the business were out of another facility. So they were making plans to enter the United States market, and they made a rather thorough study of the market and of the potential customers. The potential customers that they listed in this study were already customers of ISL, our company, International Scientific Company. Also, according to that study, it would envision that it would take Plessey at least a year to call on

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the trade, to produce a prototype model, to get a pilot production order before they could be in full gear and hope to have business on a production scale.

So that we have, on the one hand, Plessey looking to enter the United States market, to get entry with these key United States computer customers, and, on the other hand, we appear on the scene and we are in this cash crisis. Plessey learns that. And at that time we are negotiation with various people to sell the business. There is this other alternative, viable alternative, to keep this company afloat. We had to get additional cash for this. The business had value as a going concern to others in this field, and the only alternative appeared to be to sell the business.

We had an arrangement tentatively worked out with a company called Data 100 but that fell through. And at the time negotiations start with Plessey, we are really at a crisis point; I mean, we merely got enough money to keep the doors open.

So, Plessey learns that this business is for sale, and Mr. Sinsheimer, of the U. S. Plessey Company contacts Mr. Kovar here and asks for permission to send some Plessey people down to Barbados and look at our plant, our facility. They said, "Yes, we are interested.

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It may be a good fit. We want to send a production man down there; we want to send our chief financial man down there to look this place over."

And this happens in December, 1969. They were given complete run on the place, access to our financial books and records; nothing was withheld from them. They were given complete access to the production facility, and they checked it out, and the production procedures.

There is a rather elaborate report written up by the two Plessey personnel, their conclusion of which is that this does indeed represent a good fit for Plessey, that our financial condition is desperate, that they have reviewed our order book, the orders that we had with these computer customers, they had reviewed our projections for the next year, 1970, of sales, and our profit projections, and that they found them viable, and that this looked like a good acquisition for Plessey to make.

So the parties then get into serious negotiations over price. It all comes down to price. However, we were not in very good bargaining position, because they knew that if we didn't make this deal, we were out of funds, and, eventually, the business would become insolvent or go bankrupt.

Well, we said we wanted two million eight;

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they said they didn't think that was in the cards, they couldn't see paying more than a million for the business. This is the initial go-around. But they realized it was going to save them at least a year in entering this United States market. Obviously, that was of value. They reviewed our order backlog, and they knew we had a going relationship with these very important customers in the computer industry. So, there was bargaining back and forth, and the figure that was finally set was a million, four hundred and forty thousand dollars for the sale of this business, with a provision that $180,000 would be at the time of the transaction, at the time of closing, up front, that the balance would be dependent or contingent on earnings during a measuring year.

That measuring year was to start April 1, 1970, and would run through March of 1971.

We had projected sales of two million four, profits of $360,000, and under the formula that was finally agreed upon, we were to get three and a half dollars for every dollar earned. So that if we made the full $360,000, that would result in an additional payment of a million, two hundred and sixty thousand dollars. That coupled with the $180,000 paid at the closing gets you to your one million, four hundred and

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forty thousand.

Now, I jumped ahead a little bit in the story, and I want to back up, because the contract is not signed until February 4, and then there are some amendments, and we will get to those.

But after the preliminary negotiating sessions and after the parties had agreed on price and agreed that so much is going to paid down and the balance is going to be on what is called an earn-out over the measuring year, Mr. Sinzheimer, who is the head of the United States Company of Plessey, goes back to his Board in England and reports on the negotiations. And in this report he makes several stipulations which I think are material in this litigation.

One, he says that "Our people have been down there; we have written a report on their investigation and we have looked the business over, and this company is in dire financial straits." So, that they knew exactly what our financial position was at that time.

Secondly, he said that "The acquisition of this company provides a unique opportunity to implement our matrix 1969 plan." Remember, that is the plan that they had drawn up in September of 1969 for entering the United States market with other core memory plans and

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stacks. And what he is saying is that it is a perfect fit, and the acquisition comes on the scene just at the right time, and "This gives us the opportunity to do what we envisioned doing; it is going to speed things up by a year." And he very strongly recommends the acquisition of this company.

Now, the significance of that, I think the evidence will show, is that the matrix plan and several other plans we will go into later, contemplated running this business in a certain way. It is our view the provisions of the contract did not permit the running of the business contemplated by a matrix plan, and so that although they agreed in the contract to add certain provisions, it is our position that their intention at the time they signed the contract was not, withstanding what the contract provided, to run this business consistent with the 1969 matrix plan and to integrate this facility into the matrix plan, to change our Barbados facility, which was a total facility with everything there, marketing out of Barbados, engineering out of Barbados, prototype work out of Barbados, engineering design out of Barbados, to change that facility into essentially an assembly-type facility and to shift marketing, prototype design, sales activities to the United States, as envisioned by the 1969 matrix plan.

end.

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Now, let me get to the contract itself. There were three drafts of the contract. Maybe a lot of this will swim by you the first time through you, but we are going to go over the contracts one by one, and I think if you hear it all once before, it is going to be clearer when we take up the individual contracts.

Now, the first draft of the contract which was prepared by Plessey -- all drafts were prepared by Plessey -- said that during the measuring period, which was the earn-out period we had, that the business would be run by Plessey, that it would be managed by Plessey.

Now, we balked at that, because we said, "Look, most of the consideration that is being paid here is based on earnings during the measuring year, and that being the case, we would want the opportunity to run the business during the measuring year so we can see that these profits are indeed and in fact earned."

They said they would agree to that, provided that we obtained or obtain certain profit goals within a stipulated period of time. Otherwise, if we didn't, then they could take over the management of the business.

Now, at first -- well, I think I should put another piece into the picture here. As a result of

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their analysis of the business, which was, as I said, very complete -- they had people down there; they combed the books, the whole thing -- they knew exactly even with fresh capital put into the business how long it was going to take us to get a break-even point where we would be in a position to turn a profit. And by their own analysis, starting in January, the company would not be at break-even until the end of March, or beginning with the month of April. Now, that is a significant factor. And they estimated that the company would be at break-even when it reached sales $135,000. So they said, "Well, all right, we will permit you to manage the business, but you have to earn profits of $15,000 by the third month of the measuring year."

We said, "That doesn't give us enough time; we are not going to be at break-even by the third month. We need additional time."

2/5

It was finally agreed that we had until the third month of the measuring year to average profits of $15,000 a month, which measuring year started in April. So the third month would be June. And to average profits of $15,000 commencing in June we will contend gave us the benefit of both June and July to reach our average monthly profit goal.

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As I say, there were various drafts of the contract, exchanges were made. Finally we come down to this provision that ISL management may operate the business and will be given the maximum opportunity to maximize profits during the measuring year, provided, however, that notwithstanding that, if they don't make average profits starting with the third month, which is June, then Plessey can take over management. But then in that situation, that Plessey has got to run the business in good faith, which we will contend meant maximization of profits during the measuring year, which they apparently contend was not required.

Now, the closing of the contract was to be on March 2. Prior to the closing there is a memorandum written by Crocker in which he says that the financial situation of that company is desperate, that they have got just enough money to meet their payroll until the time of closing. And he said, in order to provide them with working funds in February, Plessey agreed to purchase the Villa, which was an asset of their business, where Mr. Kovar was living at the time when he was down there managing the business. And they purchased that for, I think it was, $85,000, less a mortgage, and that gave them just enough cash to get through February. So they

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knew to the penny how desperate our financial situation was.

Another one of the provisions of the contract was that on closing Plessey would put into the business $600,000 of fresh capital, so they could pay off the various debts, get current with their suppliers, and so that they would have sufficient working capital to run the business and meet their payroll. It provided that Plessey agrees to put in at least 600,000. But there was no obligation to put in any more.

Bear in mind the dates. There are minutes with reference to the English Plessey Board of Directors meeting on February 27 in which they say it now appears that rather than 600,000 to get the business afloat, it is going to take 800,000. And notwithstanding that, they say that the prospects for this business are even better than initially envisioned.

So now we come to the closing on March 2. At that closing Mr. Albert, who is the financial man for Plessey -- and the closing is no more than a closing on a house sale; it is where you exchange the papers and wrap the whole thing up according to the provisions of the contract -- "The contract had been approved by our Board and had been approved by our shareholders."

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And the contract which was approved provided that we had until June, and only commencing with June to average profits of $15,000.

At that closing after the paperwork was out of the way, Albert demands two changes, two amendments in the agreement. He said, "One, based on information I am now learning for the first time at the closing -- this is what he said -- it appears that it will take 800,000, rather than 600,000 to get this business afloat, notwithstanding the report that was made to the Plessey Board made on February 27, that they knew it was 800,000 -- and that the prospects were better than envisioned. And he said, " We want to charge you --" he didn't say, "I want to," he said, "We are going to charge you the cost of the additional $200,000." There was wrangling over that, and Kovar said he didn't think he had authority to agree to that, because that represented a change in the agreement that had been approved. But, nevertheless, it was finally agreed that we would be charged with the cost of that additional money, which they charged us at ten percent. So that is $20,000. That was going to count against our profits, and that is one of the reasons he was balking at that change.

Then they said they wanted another amendment at

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the last second, and that was that they wanted to shorten the period we had to make our profit goals of $15,000 and, from commencing in June, to commence in May. I think the evidence will show that they knew at that time that change in the agreement that it was unlikely, especially with the construction that they now place on it, they take the position that that language means we had at least $15,000, and I think the evidence will show that if that construction were given to the contract, we couldn't reasonably be expected to make the $15,000 in May starting with this infusion of capital in March, by their own records.

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Of course, we will contend that that was done in order to facilitate management takeover of the business by Plessey.

Now, as to those two amendments, it is our position that they had a gun to our head, that they were extracted by duress of the situation, that they knew that if we didn't agree, and they said, "Either you agree or we will walk away; we are not going to close," that at that point all we would have left is a lawsuit, which was not a very viable alternative, and that, therefore, we really had no alternative but to agree to these two further amendments, notwithstanding Kovar's lack of

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authority, notwithstanding that they weren't giving us anything further for them. But under the duress of the situation, we had to knuckle and agree to these, and they knew it, because they knew that our last penny was used up as of March 2. So they got the amendments.

Now, it is our position in this case, and it will be our contention, that notwithstanding the provisions in the contract, Plessey never really intended that ISL management or Kovar would be left in management to run this business. They intended to run it from the beginning. They intended to run it consistent with the 1969 matrix plan and to integrate this facility into that plan, notwithstanding the fact that the contract said we would be left in management and given a maximum opportunity to maximize profits during this measuring year.

Now, if Kovar had been malleable and bendable and less of a stand-up person and had followed their demands and directions, that was one thing, they probably would have left him in. But when he turned out to be, as later reported, a stubborn man and was not going along with these changes that they wanted to make in the facility, because he argued that there were depressed profits short term and, "I have an obligation to maximize

opportunities." They had to get rid of Kovar, and they did.

Well, the closing is March 2. We get the fresh money. We lose money in March, and on our accounting basis, I think it is about $20,000. It was anticipated that we would lose. We lost money in April. And on our accounting basis I think it was about $10,000.

I am going to jump ahead just a minute. We make money in May; the break-even was $135,000. That is what they envisioned. We had sales of $114,000, and we show a profit of $7,000, right on target with what they are projecting.

That brings us to the May 10 confrontation meeting. There had been a string joint computer conference held in Atlanta, and Crocker, who was head of the memory group in England, and Clarke, who was head of memory in the United States for Plessey, and Kovar were at that meeting. After that meeting they came back to Barbados to take a look at the facility. The Plessey people had been parading all through the plant all through the negotiations of the contract, right down to the closing. They knew it in and out. They get to Barbados. And maybe these discussions were during their plane ride down, and culminated down there. But the net

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of it is Clark says -- now, remember we in management weren't given the maximum opportunity to maximize profits -- he says to Kovar, "We have hired a man, Parr, who is going to be our marketing manager, and we want Parr to have complete authority and control over pricing of our products; we want complete control over production at Barbados; we want to establish a new facility in the Boston area for design, prototype, testing, and all sales and marketing functions will be conducted out of there."

Kovar balks. Kovar says, "Look, I am not necessarily quarreling with whether or not some of these things might not be good for Plessey long-range, but, necessarily,they are going to depress profits short-term, and I have an obligation and I have a right under this contract to maximize profits during the measuring year. So if you want those things done -- which really represented an implementation of their 1969 matrix plan -- if you want those things done, pay us the balance of the contract, one million two, it is your business to run as you see fit, and make whatever changes you want to make, but I can't agree to divest myself of pricing responsibility; I mean, that is critical to whether or not we earn the maximum pay-out here; I can't give that

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up to Parr. Then what you want to do with the production layout, that may make sense, but, obviously, during the time that that is being done, there is going to be disruption and it is going to affect our labor efficiency." And he said, "Just the very fact of establishing a facility in Boston with the change, the shifting of personnel and communications breakdown and everything else that would be incidental to a major change at that time, is going to affect short-term profitability. So I can't agree to it.

And after that, I think the evidence will show, they said, "We are going to report back to Mr. Sinsheimer," who is head of United States Plessey, "and we will let you know."

Things turned cold after that so far as any relationship with Kovar and Clark and Crocker. So what happened? At this point I think it's pretty clear from the proof that they knew that Kovar was not going to go along with their plans. He was, indeed, a stubborn man, as he had to be, because he was protecting the interests of ISL shareholders. And they would have to get rid of Kovar.

Fortunately, we have got documents here which record and memorialize what these people did.

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On the heels of that meeting they go back to England and they sit down and they make plans for the removal of Kovar and for the implementation of the very things that they demanded that he do in the meeting in May in Barbados, and they agree that Kovar is to be removed as soon as possible, as early in June as possible, this before even May results are in, that they are going to send a production team down to Barbados, that they are going to action plans for finalizing this new facility in marketing and so forth in Boston, and that marketing responsibility will be transferred to Parr, as they demanded of Kovar and he balked.

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Kovar is not a completely insensitive person and he's got a pretty good feeling about this time that his days are numbered and he comes back to the States, the United States, and he meets with our investors and shareholders and informs them that he thinks that this is a possibility, but we don't have to speculate on that one because he's back on June 9th and he goes to New York on June 11th and he is handed a letter by Mr. Clarke, which was written by Sinsheimer, in which Sinsheimer says that Plessey, pursuant to the March 2nd amendment, is assuming full management responsibility of the company forthwith and that you have failed to meet the profit goals stipulated in that amendment.

Now, we don't agree with that. We contend that we have the benefit of June 2nd, also.

Kovar said, what does this mean for me?

They said, you're through; you're fired.

He said, do you want me to help in a transition?

No, your services are not required. Clean out your desk and that's it.

We will pay you six months' pay. You can stay at the house or the villa for that period of time, but your services are through.

Now, all right, so we hold a meeting with our

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lawyers, with our shareholders, with out directors, what to do. It being our position that Plessey is in there wrongfully, prematurely and pursuant to an invalid amendment, but they are in there. I mean, they have sent a whole team down there. We can't get policemen to throw them off the premises, I don't think, so the question is how to deal

b2 with that type of situation.

It is decided to write a letter to Mr. Sinsheimer and rather than being bellicose and warlike and pounding the drums, Carlen, who is going to testify as president of Ryerson Steel, which is a big company in Chicago, and he was one of our directors and he wrote a letter to Sinsheimer and it was decided to take the soft approach, one executive to another.

We protested the take-over, but we said we now will look to Plessey as trustee for our rights under this contract and that we look to Plessey to maximize profits during the balance of the measuring year, which had then ten months to run, approximately, a little less.

Sinsheimer writes back and he said, we reject the notion that we are trustee.

Also, Carlen asked for a face to face meeting and he asked for financial data so that they could follow the progress of the business.

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Sinsheimer writes back and he says, we categorically reject the notion that we are trustee or that we have any obligation to maximize profits and, further, it is not our company policy to hand out financials so you will get no financials.

Notwithstanding that response by Sinsheimer, Carlen again, trying to work something out, asked for a face to face meeting. He was rebuffed once, finally he gets Sinsheimer to agree to sit down.

So, Carlen goes down with our attorney Shapiro and Shapiro is going to testify too. Carlen is going to testify and Shapiro is going to testify.

Again Carlen protests the take-over of management by Plessy, but we are now dealing with an accomplished fact and how best to deal with it.

And he said, you know, we need the financial data so we can follow the progress of the company. And Sinsheimer says, we are not going to give you any financial information, but, look, what are you worrying about? We're going to easily make your profit goals. We are projecting sales and profits which will easily return the 360,000 required earning for the maximum payout of 1,260,000.

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What is he telling us? He is telling us that at most, notwithstanding our objection to the premature

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take-over and breach of the contract, that at most it is a technical breach because all you are entitled to under this contract is the maximum payout anyway and we are going to pay it to you so relax.

He didn't say that just once. He said it two or three times and even after checking with some of their financial people.

Again Carlen pressed for the financial data. He said, you know, that's fine, but we'd still like to see the figures.

Sinsheimer said, no, you're not going to get them.

All right. So that face to face meeting took us some time to set it up, it took place in July. So, we have now get the Plessy team in there and they are running the business and Kovar is out and they have refused to give us any financial data, but they say, don't worry, you're going to make it, and they now proceed to implement completely the plans that were laid out in this 1969 matrix plan.

Rather than keep the business intact and run it for the measuring year and try to maximize profits, I don't think there is any question but the evidence is going to disclose that they operated and ran that business as if it were their own and made whatever changes they

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wanted to make in the business without regard to the adverse effect on short term profitability. They employed personnel, who we will contend were incompetent. Their marketing man Parr is fired, well, effective the day after the measuring year, but actually as early as February. The measuring year ended in March of '71, as early as February they had already hired his replacement and taken away all authority from him.

They terminated our import-export agent without obtaining the necessary licenses with the result that they were unable to ship raw materials to Barbados for a period of almost six weeks, which, you know, dropped production to a halt. If we didn't have the raw material for these memory components, we couldn't get the production out the other door.

It was understood that all the negotiations and indeed during the initial period that Kovar was in management that they would provide us with whatever testing equipment we needed and, yet, the evidence will show that despite repeated pleas from their local man for more test equipment, so they could get these cores past test and meet the customer quality requirements, that that test equipment doesn't arrive on the scene until November or December with only a few months remaining in the measuring

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year.

We have this sales rep force, but then on top of that, if you will, was a man by the name of Tucker, who was head of all the sales reps for the United States, and Tucker is going to appear here and testify and he is going to testify that one of the contentions that is going to be made by the defense is, well, we tried, we made some good faith mistakes. The industry was in a down period. You couldn't sell anything anyway because of this recession.

Tucker is going to testify that indeed there was a downturn in the economy; that ISL was in a unique position because it was the only supplier or it was one of two outside suppliers for these key accounts and that the potential business was there and that he lost potential orders because either, one, he couldn't even get a request for quotation by the customer actioned or acted on by Parr; weeks would go by.

He'd make a request for a quotation to this customer, which was the necessary first step to get the business, and six, seven, eight weeks would go by with no reply from Parr.

I think the evidence will show that they were in a state of absolute confusion and chaos down in Barbados and nobody knew what anybody was doing and that their

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pricing formula was completely foulded up.

When he did, and as proof of that pudding, Tucker will testify that when he did get quotations, they weren't competitive; that they had feedback from the industry, they had feedback from the customers, to simplify this we will convert it to bits, which are these little donut cores that are strung together, that the industry was quoting at six-tenths of a cent a bit whereas Parr was feeding him price quotations at nine-tenths of a cent a bit. No way they would get the business quoting those kind of prices, but Parr wouldn't believe it.

All right, Tucker will also testify that orders were lost because of delays in delivery, because of quality. It is our position that once Plessey assumed management, and we contend wrongfully, it did indeed have an obligation to maximize profits, run that business in a proper manner and not to take action which would depress profits short term.

Just another instance of the complete --

THE COURT: You have had about 55 minutes.

MR. McCONNELL: I am right at the end, your Honor.

THE COURT: Right.

MR. McCONNELL: Another instance of the complete chaos that was going on, midstream in the measuring year

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they transfer responsibility and authority for operating this ISL facility, Barbados and Boston, from Clarke in the United States to Crocker in the United Kingdom or England.

Another thing they did was besides building these kind of things (indicating), we made cable harnesses and that was potentially a very profitable business and under the contract that was to be part of the business from which profits were to be generated, but after they took over management they discontinued that and they lost potential cable harness business and we claim that that is a breach.

So, that brings us to the end of the story. After the end of the measuring year Sinsheimer advises us that there will be no payout because, rather than turning a profit, this business lost money and I think the figures on our accounting basis for the measuring year will show that they lost somewhere in the neighborhood of $600,000.

He said, according to the Price, Waterhouse audit, the business lost money and we are not going to pay you anything. He didn't even enclose the audit, just the letter.

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They got our business. They got our customers and we get a letter saying, that's it, boys, there'll be no further payout.

All right, just to summarize, it is our position

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here that Plessey never intended to honor or abide by the management provisions in this contract or give Kovar the opportunity to earn these profits under the contract.

And, too, that they extracted the March 2nd amendment shortening the period of time that we had in order to facilitate a management take-over.

And, three, that when he would not go along with what they wanted done, notwithstanding whether the business earned profits or not, they made a decision to get rid of Kovar and take over this management.

And, four, that their take-over was in breach of the contract provisions.

And, five, notwithstanding the contract provisions to maximize profits during the measuring year, they operated the business to suit their own ends without regard to profit maximization or what they were doing might be depressing profits short term.

We are going to offer evidence that our sales forecasts and projections were realistic and that the profits could have been earned on those sales, two million four, profits of 360,000 could have been earned and we are going to ask you for the full contract price.

I thank you very much. I didn't mean to run that long, but there are a lot of facts and I think that having

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told you the story it may make it easier to follow when you hear it from the stand and that will be the evidence.

THE COURT: We will take a five-minute recess and then we will hear the defendant's opening.

(Recess.)

(In open court; jury present.)

THE COURT: You may proceed, Mr. Maloney.

MR. MALONEY: Your Honor, good morning, ladies and gentlemen:

I guess you may have gathered that we feel that by the time you have heard all the evidence you will feel the facts are quite different from the way Mr. McConnell described them or we wouldn't all be here today.

I would like to tell you a little more about the business of ISL that Mr. McConnell didn't tell you about.

They had been in operation for three years by the time our client, Plessey, decided to buy the business.

The first year they had lost about $500,000.

The second year they had lost about $700,000 by selling products having a value of $800,000. So, they had had no success in those first two years.

And, as Mr. McConnell says, by the time they came to us they could not get their shareholders to invest

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anymore money in the company. They apparently had no confidence in the ability of the present management to use additional funds of theirs to make a profit. They apparently couldn't borrow money from the banks because if this was such a valuable business they would have done that or the other reason is they may have attempted to borrow the money, but they had no assets. There was no value left in the business on which the banks could rely to receive payment.

Now, what did they tell us when they came to us? They said, notwithstanding all of this money we lost in the first two years, now we are in our third year and it's coming to an end, this is in December of 1969, we are only going to lose $200,000 this year. Last year we lost $700,000, in 1968, but we have increased our sales and this year we are only going to lose $200,000.

In 1970, if we could only get some cash to invest in this business so we could pay for our employees' salaries and if we could pay for materials, we have got commitments from our customers for over two and a half million dollars of orders that we are going to ship.

Mind you, in 1968 they had only sold $800,000 worth of orders and in 1969 only a million, but they told us, we have orders, these customers have told our sales

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representatives that this is going to be a good year and we are going to give you orders for two and a half million dollars worth of products, but we need money in the company.

Now, they claim we had a matrix plan and we did. You will see the plan. It will be introduced in evidence. It will be an exhibit and you can read it.

It is something that every business does when it decides to go into producing a new product in a new area. Someone has to sit down and plan how it should be done.

When the opportunity to purchase ISL came along, it appeared that that would be one way of carrying out the plan and, of course, it would be faster. If ISL had reached the point where it had established good relationships with a number of customers and it really had orders to sell two and a half million dollars worth of products, then the Plessey Company, which was not selling these computer parts in the United States, could become a competing company much faster than if they had to start by building their own factory somewhere and training new employees.

But, of course, it all depended on whether or not those orders were there.

Now, Mr. McConnell asks you to believe that we

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had the plan about how to do this but that when we negotiated with Mr. Kovar and his associates, they wanted to run the business of ISL differently from the plan so that the men at the Plessey Company said, uh huh, we'll sit down and make a written agreement with Mr. Kovar and we'll go along with him and tell him we'll run the business his way, but we don't really intend to do that. We'll throw Kovar out as soon as possible and we'll do it our way.

I say to you that the evidence will not support that claim. I say to you that is not even common sense based upon what Mr. McConnell himself has told you.

Why did we have to go through such a circuitous way of deceiving Mr. Kovar? Mr. McConnell, himself, admits this business was going to close its doors within a matter of days unless we put money into it.

Now, all of you have some experience with negotiation. Plessey is a large company. It has a lot of money. If Mr. Kovar is going to have to close in a few days, why don't we just tell him, this is it, Mr. Kovar, you agreed to these terms, but we will not buy your company.

As you hear the witnesses testify, try to answer that question in your mind. What possible reason would we have for deceiving him? We weren't under pressure. We didn't have to buy the company in January, February or

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March. We could have just sat back and waited. We could have waited until he closed his doors and then he would have been even more desperate and probably would have sold the business for less, but we didn't do that. I think b5 when you hear the witnesses testify you will see that we treated them like gentlemen. We didn't use coercion on them.

We signed the contract on February 4, 1970. That contract did not obligate us to put any money into Mr. Kovar's business until March when we had the closing, but we gave him $80,000 so that he could keep paying his employees and he could keep the factory open.

Now, why, if we wanted these different things in the agreement that they say were in the back of our mind, why didn't we do it at that point when Alan said, I'm going to have to close the factory without $80,000. We could have said, well, you do this or we don't give you the 80,000, but we didn't do it, even though the contract did not obligate us to give him the money, we gave him the $80,000 so he could stay open for an additional month.

Now, we did send people down to look at the factory. Mr. McConnell would have you believe that the two men, one was an accountant and one was a man familiar with production techniques and so on from Plessey's company in England, they went down there and they spent three or

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four days.

Mr. McConnell and his client would have you believe that in that brief period of time that we would be able to so sufficiently investigate this business that we could make a thorough judgment of whether or not what Mr. Kovar had told us was accurate.

I think the evidence will show that what the accountant was given was a financial statement that showed that at the end of November, 1969, that is 11 months of the year, the business was only losing $169,000 and the accountant discussed with Mr. Kovar and Mr. Kovar's accountant, Mr. Hourihan, how much money do you think you are going to lose in December, 1969, and January and February until we can take over the business?

These gentlemen and our witnesses will testify they estimated they would lose no more than $20,000 a month.

Now, why was this important? It is important because no matter how many orders Mr. Kovar told us he had, in order for us to make a decision of whether or not we should buy the business, we had to decide how much money it would take us to run the business. Now, if Mr. Kovar tells us for the year 1969 he is going to lose $200,000, we already know that they have no cash left.

You will also hear some testimony about the net

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worth of the business. I will leave that to the accountants to explain that to you in its technical meaning, but if a company has a zero net worth or if its net worth is a negative number, a minus number, that means if you took all its assets and sold them you would not get enough money to pay all of its liabilities.

There was no disagreement between Mr. Kovar and his associates and between our client that this business would have a zero net worth by the time we took it over. That was based on the business losing $200,000 for 1969. Our witnesses will testify that at the time when we signed the contract on February 4th that was the information we had.

Again, based on their representations that the business had reached the turning point, maybe it wouldn't begin to be profitable in January and February, but they told us it would not lose more than $20,000 a month. There was a provision in the agreement, and I don't think they are going to claim that they were coerced, in which they represented that the losses in January and February and any other months before we closed would not exceed $20,000 a month. That is the basis on which we signed the contract.

Now, the principal issue in this lawsuit with

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respect to whether or not Plessey breached the contract revolves around this language in the contract as to who would manage the business. Now, at first our client did not want to let Mr. Kovar continue to manage the business. Mr. Kovar has been a practicing attorney all of his life. His only business experience was the year or two where he tried to run this company in Barbados.

We felt that the people from Plessey could run the business better than Mr. Kovar would be able to do, but he continued to negotiate and he continued to say that he thought he had the experience and he thought he had brought the company to the point where he could do it.

All right, now again I say, they claim we coerced them. They are the ones who were running out of money. If we had a fraudulent scheme, if we wanted to run the business in our own way, what possible motive, wrong motive did we have for finally agreeing to let Mr. Kovar run the business? If we really didn't want him to run the business, we didn't have to agree to it on February 4th and then go all through the machinations and schemes that Mr. McConnell has suggested, we could have just held out until he closed the plant a couple of weeks later and renewed the offer.

Now, there will be much testimony about who drafted that provision concerning the management of the business.

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Mr. McConnell suggested in his opening statement that our lawyers drafted this language. We think after you have heard all of the witnesses you will find that it was not our lawyers, but Mr. Kovar's lawyers who had drafted that language and asked us to put it in the contract.

You will also hear a lot of testimony concerning what the language was supposed to mean. The parties agree here that the language is ambiguous, which means it could have more than one meaning. So the witnesses on the stand participated in the negotiations, who participated in the transaction will say, "I thought the agreement was this, and what the case boils down to is that when we agreed to the provision on February 4, our agreement was that Mr. Kovar would have three months, really, four months, because we were closing on March 2nd." But Mr. McConnell mentioned the measure year, that it went from April 1, 1970, to March 31, 1971. That is the twelve-month period that the parties agreed would determine the amount of profits under the agreement. And then you would take the amount of profits and you would multiply it by $3.50. If the profits were $10,000, they would get $35,000 for the business; if the profits were $100,000, they would get $350,000; if the business

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lost money, they would get nothing more.

Now, why did they agree to a contract like that? We paid them $180,000 at the beginning, but the bulk of their money, as Mr. McConnell said, was $1,400,000. Why did they agree that that would all be contingent on profits? Because that was the only value of this business; it had no assets; no one could have taken the assets of this business and gone out and sold them and paid off all its debts and had any money left. You had to be able to run this business at a profit.

We said that under the contract we agreed that we would give Mr. Kovar the first three months of the measuring year, by which time he had to show a profit of $15,000. So that would be April, May, June. We are closing the transaction on March 2nd, and we are putting the $600,000 in. That allows him to go out and pay for his materials and pay for whatever else he has to do. So he is really getting four months; he is getting March, April, May and whatever he does in those does not count against him, but by June if he does not get $15,000, we say we have a right to take over control of the business. That was what was supposed to be in the first contract.

There was much talk about this, talk back

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and forth on the telephone over this, and the parties finally signed the agreement, and Mr. Kovar, who is an attorney, signed the agreement. You may appreciate some of the confusion that was involved here. It is not just a straight forward disagreement about some clear language. You will have to listen to the witnesses and decide what was the agreement, and did the lawyers write it down the right way? Which of the meanings that are suggested to you are the right ones?

So, the agreement is signed. Just about the time the agreement is signed, Mr. Kovar asks us for the $80,000, and we, the people who allegedly are having this fraudulent scheme in mind, we voluntarily give him the $80,000. The month of February goes by and we go down to the closing on March 2nd.

Now, Mr. McConnell has referred to the provision in the Board of Directors meeting minutes of our English company. The defendant in this case, Plessey, Incorporated, is a company here with offices in New York City. They are owned by a company in England. As we were required to, we had to produce any written records we had concerning this transaction.

There is a provision in one of those minutes that says on February 27 someone reported to the English

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Board of Directors, a Mr. Frey, that rather than $600,000, it would take $800,000 to be invested in the business immediately. Now, Mr. McConnell is going to make much of that during the trial, because the people here in New York who are concerned with and negotiating this transaction, signing the contract, and attending the closing say that they didn't find out that the $200,000 would be needed until they got to Barbados on March 2nd. No one claimed, not even Mr. McConnell, as far as I can judge from his opening statement, that we knew we would have to increase the $600,000 to $800,000 when we signed the contract. The contract says $600,000.

Now, what happens when the parties get to Barbados? Our accountant goes down there, the same accountant who had gone down there a few days before the contract was signed, and he goes with his lawyer. And at that time Mr. Hourihan, who is Mr. Kovar's accountant, who is the controller of ISL in Barbados, he gives Mr. Albert a financial statement for 1969 which now just includes one more month in the statement that Mr. Albert had already been given before, and the loss in 1969 is now $400,000. Mr. Albert will come here and swear that it was not until March 2nd that he learned that the financial statement given to him before the contract was wrong.

end.

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Based on that statement and what Hourihan and Kovar had said to him, we entered into this agreement thinking the business would lose $200,000. When we come to the closing we learn they lost $400,000.

Now, as I say, this business has no assets; it has a negative net worth. So there are no assets you can sell to make up that difference. Now, you can sell products, and if you sell them at a profit you can take the profits to make up the 200,000. But where is the money going to come from in the meantime to run the business?

Now, our people, our accountant and our lawyer have decided that the only way the business could keep running if we increased the money from $600,000 to $800,000. You will remember that I also told you that the agreement contained a representation by the plaintiff that they would not lose more than $20,000 a month in January and February. Mr. Albert and Mr. Dubin, who is their lawyer, arriving in Barbados, they were told that for the months of January and February the business lost $74,000. Well, that is almost twice the amount in the contract.

On that basis Albert and Dubin said to Kovar and his attorney -- Mr. Kovar, in addition to being an attorney, himself was represented, was represented by

partners in a large law firm in Chicago, so he had adequate legal representation, as well as Plessey, our accountant and our lawyer said to Mr. Kovar and his lawyer, "We are not going to continue with this transaction. You misled us about how much money would be needed here; you misled us about how much money would be lost for January and February. We don't think that we have any legal obligation to go through with this contract."

So, the parties negotiated back and forth, and they reach an agreement that we would go through with the deal if Mr. Kovar and the plaintiff agree to two changes in the contract.

Now, when Mr. Albert found out about this financial information, he called up Mr. Sinsheimer in New York. Mr. Sinsheimer had not gone down to the closing. He is the gentleman who is the chief man in charge of this operation, this negotiation, this contract. So Mr. Albert had to clear everything with Mr. Sinsheimer. Mr. Sinsheimer blew his stack when he heard of this. He wanted to call the deal off completely; he felt he had been misled by Mr. Hourihan and the financial information that had been given, but after he had calmed down, we agreed to two things. We said, "We will put the additional $200,000 in, but on that money you will

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have to pay us interest." Now, on the $600,000 we were not charging them interest. We were putting our own money in there and we would pay whatever interest had to be paid on that loan, and we would not subtract it from their profits during the measuring year. But when we found we had to put in an additional 200,000, we said, "We are going to charge that interest against whatever profits the business makes during this twelve-month period." And, in addition, because we were very upset about the effect that our representatives felt that Mr. Kovar had misled us, this gave us further reason to believe that we did not think that he was capable of running the business. So we said, "You have to shorten that management provision by one month. Instead of making $15,000 commencing in June, you now have to make the $15,000 commencing in May."

Now, Mr. McConnell suggests in his opening statement that because our accountant had been down there for three or four days, that he had become an expert on how much profit the business could make, how many orders they really had, what was going to happen on a month by month basis. I suggest that the testimony will prove that that is not so. This was their business. They should have known how much profit they could make. And

they agreed to these amendments.

Now, we will hear some testimony, I assume, during the trial, the plaintiff now claims that Mr. Kovar didn't have authority to sign the amendments.

Now, listen carefully to the witnesses and you decide. Did anyone at the closing on March 2nd raise any question about Mr. Kovar's authority to sign these amendments? He is an attorney; he is the president of the company; he was represented by a lawyer from a reputable law firm that was representing his company. Did anybody raise any question about his authority at that time? Or is that something they have raised to create confusion in this lawsuit?

They say we coerced them. They said they had a loan coming due. Well, in addition to the loan coming due, the worst coercion was the business would close if we didn't go through with the transaction. But everybody knew that from the day of our first negotiations. Why did we have to wait until March 2nd to coerce them? They will say it's because the loan was coming due. That loan was coming due for months; everybody knew that loan had to be paid. They signed the amendments.

Mr. Kovar continued running the business and his lawyer went back to Chicago. We didn't take over

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control of management from Mr. Kovar until June 9. If there was anything wrong with those amendments, between March 2nd and June 9th what were they doing? Did someone report to the Board of Directors of the plaintiff that Mr. Kovar had gone down there and changed the contract in Barbados without authority? Listen and see if you hear any testimony like that.

Did anyone claim that there was anything wrong with the amendments all during those three months? I suggest you will hear that no one complained for three months.

Then on June 9th, 1970, Mr. Kovar was able to make only a $6,000 profit by May, and under the contract our client felt that gave us a legal right to take over.

Now, as Mr. McConnell says, we also were dissatisfied with Mr. Kovar for other reasons. We didn't think he knew how to run a business. He would not agree with our suggestions on how to improve the business. But that is not the point here. The point you will have to decide is under the contract did we have a right to fire him or not? If we had a right to fire him under the contract, our reasons don't matter. At the same time, if we didn't have a right to fire him under the

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contract, then we could not fire him. It didn't matter whether we liked him nor what we thought of his ability. The contract governed the rights of the parties, not what Sinsheimer thought of Kovar or the other people you are going to hear about. That is the only question. And if you find that under the contract he had to make $15,000 profit by May and he didn't, then I think you will conclude that we fired him properly.

Now, strangely enough, although this amendment had taken on great importance in this lawsuit, you will hear testimony that the Board of Directors of the plaintiff claims they never heard of the amendment for three months, that the first they heard of it was when we sent in a letter in June charging Mr. Kovar, and then the directors got together and they called for Mr. Kovar and they called their lawyer who had been at the closing, and another lawyer, and they sat there and said, "What are we going to do?"

Now, Mr. McConnell suggests we fired Mr. Kovar in violation of the contract. I suggest that if that is what they decided in June, they would have done something about it. They wouldn't just continue to go along with our conduct if it was in violation of the contract.

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Mr. McConnell suggests we sent a team of people down to Barbados and there was nothing they could do. I think the words he used were, "What were we supposed to do? Call the police?" Well, I don't know about calling the police, but we do have courts in this country. What Mr. Kovar and all of his lawyers could have done was come to court, where we have a legal advice known as an injunction, and if there is a contract and somebody is violating the rights under the contract, to come in and explain to the judge, and he decides right then and there on the spot whether you can do what you did or not.

Now, why didn't they do that in June, 1970? I tell you they didn't do it because they knew the amendments were proper, that we had a right to it, that Mr. Kovar had the right to sign it, and that they had to live up to it, and that when we fired him in June, they knew again that that was proper under the contract, and that they would have no business in coming to court.

Now, you have heard a lot about coercion in February and March. There was no coercion by June. What could we have done to them if they came to court and challenged our action and told the judge it was wrong? We already paid them the $180,000. We had paid off the

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$200,000 loan they had coming due, where someone else would have taken over the business; we already paid that off in March. And we put $600,000 in the business. There was nothing we could do to them; they could have come to the judge and said Mr. Kovar has a right to stay there for another month and make profits and operate under the contract. They didn't do it, and I say the reason they didn't do it, as you will find after listening to the witnesses, is because they had no right to do it, that we acted properly. And that is so much for their fraud claim and breach of contract claim by improper amendments and firing Mr. Kovar prematurely.

I have lived with this case for a year. I believe in my clients. Mr. McConnell believes in his clients. Some of these issues may turn out against us. You may decide that Mr. McConnell is right on one of them; you may decide the amendment was wrong, or if the amendment was right, we acted too soon under the amendment. But then we have to go a step further. What does that mean? That means that we did something wrong under the contract, but that does not entitle the plaintiff to any money, unless what we did wrong caused the business to lose money.

Now, the business lost $600,000 by the

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4/3 13 end of those twelve months. This is the business that Mr. Kovar told us had two and a half million dollars in orders and was going to make a $300,000 profit. You will have to listen to the witnesses who take the stand and make a judgment about whether any of the things that Mr. McConnell says they did could have resulted in a $900,000 swing like that.

We don't concede that any of the things they are going to bring out were in violation of the contract.

They refer to the device on the table there, a cable harness, and they said we stopped doing cable harness business, and we did. Our witnesses will testify that we stopped doing it because we didn't think it was a profitable business. The company had one contract on the books for cable harness. We told the sales representatives we don't want any more of this business when we have finished that contract. Now, I suggest to you that you should listen very carefully to the plaintiff's witnesses and find out, do any of them say there was a big cable harness contract out there that they were going to get and would have made a big profit on, except for the fact that we got out of that business?

4/4 The plant layout? They say we want to change

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the plant layout all around. We did that because we disagreed with Mr. Kovar, who is a lawyer, based on our experienced people. You must remember, we were making the same products in England and we had experienced, technical people whom we thought knew a little better how to do it than Mr. Kovar. I think the testimony you will hear will show you it involved about $20,000, so it's not a question of money that would be spent for new work benches or anything like that.

Mr. Kovar said it would disrupt production; we felt it would improve production. How much time it took? A couple of weeks. It would result in the people working more proficiently and with more profit.

They talked about opening a Boston facility. He seems to indicate that Mr. Kovar was against opening an office in the United States. Well, we are going to introduce in evidence letters from Mr. Kovar saying what a good idea it was to have an office in the United States.

Remember, now, this company is down in Barbados. You have a customer out in California or up in Boston. That is a long way to have to ship products back and forth, to have long distance telephone conversations. The idea of an office in the United States

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is so you can have some engineer there, you can have some people familiar with sales there, and if a problem comes up with a customer, you get right out to them right away. And we did that.

Now, I think the contract is probably silent about who should have paid for that office, but the testimony you will here is that we spent $200,000 on that office and we did not charge it to the plaintiff. That is $200,000 in addition to the $600,000 we lost. We didn't even charge them for opening the new office, which should have helped this business. We didn't fire any of their employees. The only man who was fired was Mr. Kovar, because we didn't think a lawyer could run a technical plant like that. We kept all the engineers he had in Barbados, with a few exceptions; the Barbadian people who were working on the cores were not let go, nor the sales representatives . The sales representatives are the people who go out to different customers and sell the products. We kept all of them. All we said is, "Mr. Kovar, we think your pricing is whackey; we think that is why you lose money; we want somebody to look those prices over before they go out to see if you are making a profit. Have you considered your costs?"

Listen to the witnesses. If you decide that

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we didn't breach the contract in any way by requiring the amendments and by firing Mr. Kovar, then the only thing we could have done in violation of the contract is opening these offices and so on. If you find all of that is proper, then our client is entitled to a verdict in his favor.

But assuming you find one or more of these things is wrong, that maybe we spent too much money, then you have to decide taking that $600,000 we lost, how much money could each of these items have involved? How much would it reduce that $600,000 loss, because before they ever get to profits, and multiplying those profits by $3.50, they have to explain a way that $600,000 loss.

Now, they didn't have two and a half million dollars in orders on their books; they had around a million dollars in orders on their books. That is a substantial difference. Two and a half million is two and a half times that amount.

We are satisfied that the testimony you will hear is and that the orders they really did have we performed them, whatever they had on the books with a few exceptions. We might have lost $20,000 or $30,000, but nothing that could account for a $600,000 loss.

Listen to the improper expenses they say we incurred. I say you will find that those do not add up to fifty or sixty thousand dollars.

Therefore, if you agree after hearing all the witnesses that we did not incur unnecessary expenses and if you agree that we performed all the contracts they really had, well, then, there is only one other way to wipe out that loss, then some witness is going to have to convince you that there were additional contracts that could have been obtained after Mr. Kovar was fired. We say we performed all the contracts Mr. Kovar had. But he says, "There are additional contracts in the next ten months that you should have obtained and you didn't, because Parr gave a higher price, or something else went wrong." Now, listen to the witnesses. Were there any such contracts? We are satisfied you will find after listening to all of their witnesses, they cannot cite any contracts that could possibly involve enough profit to wipe out that $600,000 loss.

Thank you for your patience and your attention, ladies and gentlemen.

THE COURT: Ladies and gentlemen, we will recess for lunch now and meet again at two o'clock. In the meantime, remember my admonition: Don't talk to

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anyone about this case at all.

I will see you back at two o'clock.

[Luncheon recess taken.]

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AFTERNOON SESSION

2 P.M.

(In open court; jury present.)

THE COURT: Good afternoon, ladies and gentlemen.

You recall we have now heard the opening statements from both sides so we will now proceed to hear the evidence and you may proceed, Mr. McConnell.

MR. McCONNELL: Thank you, your Honor. I call as my first witness Mr. Kovar.

A L L A N K O V A R, called as a witness, having been duly sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. McCONNELL:

Q Would you state your full name, please?

A Edward Allan Kovar. I go by my middle name.

Q Where do you live?

A In Wayne, Illinois, which is a suburb of Chicago.

Q How old are you?

A 46.

Q What has been your education?

A I have a Bachelor of Science degree in industrial psychology from Northwestern University and I have a Juris

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Doctor degree from Northwestern University, School of Law.

Q When did you graduate from Northwestern undergraduate and when did you graduate from law school?

A I was graduated from undergrad school in 1949 and from law school in 1952.

Q Then, did you go into the practice of law?

A Yes, I passed the bar in 1952 and entered active practice of law.

Q With what firm?

A The firm of Seyferth, Shaw, Fairweather & Geraldson, a Chicago law firm.

Q How long did you remain with that firm?

A About 15 years.

Q At the time you left were you a partner?

A Yes.

Q Now, I take it you are familiar with a company called International Scientific Limited?

A Yes.

Q Tell us what you had to do with the founding of that company?

A I was one of the three founders of the company.

THE COURT: When was that, sir?

THE WITNESS: The corporation was actually formed in July of 1966 and in January or February of 1966 is when

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the discussion initially took place concerning its formation.

THE COURT: This is when you left the practice of law?

THE WITNESS: No, sir, I did not leave until the following year, 1967.

THE COURT: You were still in the practice of law when you started these discussions?

THE WITNESS: Yes, sir.

THE COURT: Thank you. All right.

A (Continuing) Myself and two others were the original founders of the company, Victor Johnson, who was vice president and director of American Sugar Company, and Leon Van Bellingham, who was then a manager with NBC.

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I went down to Barbados in July of 1966 to actually have the corporation formed by a local attorney there in Barbados.

Q When did the company become operational?

A Well, it actually -- depending upon how you define the term -- we hired a manager and a chief engineer in 1966--

THE COURT: What part of the year?

THE WITNESS: This would have been in July of 1966 after the formation of the corporation.

We had negotiated with the Barbados Development

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Board, which was a part of the Barbados Government, for a building to be built for us and that prior to its completion --

THE COURT: This is in Bridgetown?

THE WITNESS: Yes, sir. The plant to be built was right at the airport.

While it was being constructed we rented some small facilities in an industrial park in Bridgetown, which is the main city in the country, and started training people and got one or two small contracts with U.S. companies.

Unfortunately, the building was not completed on schedule and it was not until February of 1968 that our building was ready and we were then really ready at that point to get into full production.

Q Now, what was to be the business of International Scientific Limited or ISL?

A The business was to be the designing and constructing of core memory products and the assembly o electro-mechanical and electronic products such as cable harness assemblies, handle assemblies, printed circuit board, stuffing, so-called, in which various electronic components are attached to a printed circuit board.

It was a combination of assembly plus the design capacity of core memory products.

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THE COURT: Would you tell us in very simple words so that even if the jury can understand, I won't understand it, tell us what a core memory product is, if you could?

THE WITNESS: Yes, sir. A core itself is a very small metal donut, which is a magnet, and because a magnet reacts in either a plus or a negative fashion when activated by electronic impulse, it is used as a storage center for information for computers.

It will respond either in the negative or positive fashion and, therefore, it can give a yes or no answer or a 1 or 2 answer by electric impulse.

A core plane is a plane surface, it may be a printed circuit board, it may be something else, upon which cores are placed and wires weaved through the cores, anywhere from two to five wires going through each core. When those wires are activated by electronic impulse they will go through and either pull an answer from the core, a 1 or 2 or a yes or a no, or they put that information into the magnet. It is the basic memory of computer systems and was at that time the largest -- by far the largest-- type of memory that was produced for computers and for peripheral equipment.

Peripheral equipment being the type of feed in

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information to the computer or the type of equipment which would take information out in various forms. Some of those pieces of equipment would have a memory of their own and that memory might very well be and often was a core memory.

Q And what is a core memory stack, as distinguished from a plank?

A As the term "stack" indicates, it is a stack of up planes, just as a stack of pancakes. The planes are then each wired together so that there is, rather than just one level of cores, there may be two to eighteen or more levels of those levels, when wired together, are called stacks.

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Q I show you what has been marked Plaintiff's Exhibit 102 and I ask you if you can tell the court and jury what that is.

A This is a core memory stack. The boxlike structure consists of 13 planes which are wired together with a cover on both sides so that there are in fact 15 of these boards which are wired together here. Then to the completed stack is a cable harness assembly which had wired to it various planes in this stack and then the wires are all then attacked to connectors. The design of this is such that the unit can be plugged into the customer's product and it would constitute then the memory for that product. In some cases our design was strictly to customer design. He would say what he had to have, what size it would be and in other cases it was to our own design, but this basically is the memory for a small computer or for a piece of peripheral equipment.

MR. McCONNELL: I offer 102 in evidence, your Honor.

MR. MALONEY: No objection, your Honor.

THE COURT: That will be received.

xx (Plaintiff's Exhibit 102 received in evidence.)

Q Now, how are these cores strung together physically? Can that be done by mechanical means?

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A There is an automated process which IBM had in which two wires could be strung to a core, but most systems called for more than two wires and because the state of art was constantly changing, no one, including IBM, had figured out a way of automating the process completely, so what is done is that a wire, which may be the size of a human hair, which is attached to an equally small diameter needle, is strung through cores which have been placed in a predetermined configuration and there is a stringing process of actually sewing the wire through the core. Basically it's done by feel rather than by sight. The cores that we were dealing with would be anywhere from 16 to 50 millimeter in outer diameter so that the inner diameter might be anywhere from 12 to 45 millimeter. Through that little space anywhere from up to 5 wires would be strung by this hand process, placing the needle through, pulling the wire.

THE COURT: This is done by hand, is it?

THE WITNESS: Yes, sir.

Q How did you happen to decide on going to Barbados to do this type of work?

A Both Mr. Van Bellingham and myself were familiar with the island from vacations, were impressed with the people and were aware that they had a substantial

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unemployment problem which their government was trying to alleviate by creating incentives for industry to come to Barbados. It was our general plan to develop an assembly operation in the electronics field utilizing training and utilizing the Barbardian citizens to do the work. It was our intent to develop a full operation rather than just an assembly shop in that what we wanted ultimately to do was to have all administrative, technical and professional help trained from the Barbadian work force as well as the production and maintenance force. For that reason the government and the development board were happy to work with us and that's the reason why they agreed to build the building for us.

Q You say that building was completed in February of 1968?

A That's correct.

Q When did you leave the practice and go to Barbados?

A I left the practice in August of 1967 and took over the chief executive position of the company in about October of 1967.

Q Approximately how many laborers did you have that were doing this stringing work?

A Well, before we moved to the new plant we had,

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I think, only about 75, because we had very limited facilities. By the time -- by the fall-winter of 1969 we had somewhere around 450 to 500 employees.

Q What kind of a sales or marketing force did you have?

A We had a sales force consisting of independent manufacturers' representatives who not only represented us, but who represented other companies as well in the electronics field.

THE COURT: Let's make that clear. Where were these sales representatives, in the United States?

THE WITNESS: Yes, sir.

THE COURT: These were in the United States, so they were your sales representatives for the products that you were making in Barbados?

THE WITNESS: That's correct. What we did was to employ sales representatives in San Francisco, Los Angeles, Phoenix, Dallis, Houston, in Chicago and Boston, in New York and then we had another sales representative, Mr. Tucker, who we employed to cover all other areas and to supervise the other representatives.

THE COURT: Where was Mr. Tucker located?

THE WITNESS: He lived in Philadelphia. He covered the central and southeast coast as well as other

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areas of the country which were not covered. The Chicago representative also covered Minneapolis.

ALTERNATE JUROR: Could I ask a question?

MR. McCONNELL: Your Honor?

THE COURT: What is it?

ALTERNATE JUROR: Were they all full time employees, the sales representatives?

THE COURT: He said they worked for other concerns, so they were not full time; is that correct?

THE WITNESS: That's correct. The salesmen were not employees of the company. They were independent representatives who represented several different companies, one of which was ours, and it was --

ALTERNATE JUROR: I see now.

THE WITNESS: It was one of my functions to travel around the states to make sure that they could spend as much time as I could get them to on our product, and this was one of Mr. Tucker's functions and we gave him an overriding commission to act as a motivator as well.

THE COURT: But he was not an employee?

THE WITNESS: He was not an employee.

Q I take it all of these sales representatives, including Mr. Tucker, were on commissions; is that correct?

A That's right. There was no salary.

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Q Which is to say that they got a percentage of the sale price; is that it?

A That's correct.

Q Do you recall what the commission arrangements were?

A I believe that -- in most cases I think we granted a 5 per cent commission, which did not apply to the full price because the full price included transportation costs and duty. It is my recollection that the commission was based upon the price of the product less those two add on items. Mr. Tucker received an overriding commission of 3 per cent so that we paid a total commission of 8 per cent.

Q Where did you get your raw materials with which to manufacture or fabricate these core planes and stacks?

A Almost all of the material came from the United States. Our basic materials were the cores themselves, of course.

THE COURT: What are they made up of?

THE WITNESS: It's a ferrite compound which is an iron type of compound and they are formed -- they are donut shaped and they are formed by pressure, a small sort of press. Depending upon what sort of electronic response is necessary, the mixture may vary. Different manufacturers

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had cores which would respond in different fashions, in different temperature requirements and this kind of thing. That was the basic material. In addition, of course, wire, copper wire, connectors, printed circuit boards themselves and quite often various other electronic components, semiconductors of various sorts which would be attached to the product. In addition there was a type of plane which was an open type of plane rather than the printed circuit board and it consisted of four plastic pieces which formed the outer rim. There was nothing in the center other than -- the cores hang loose. It had some advantage in being open. It would not heat up as much in use and it had certain advantages in that fashion. That special plastic piece that formed the outside had to be specially designed and built and that was another of our materials.

Q Are you familiar with two companies called STC and the other Intersil?

A Yes, sir.

Q What was their connection with ISL?

A Intersil was a Bahamian corporation which was formed to act --

THE COURT: How do you spell Intersil?

THE WITNESS: I-n-t-e-r-s-i-l.

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A It was intended to be sort of a contraction of International Scientific Limited. That's what how we came across the name. It was formed to act as a purchasing agent for ISL and with office in the States and would procure all of the materials that we needed or supplies in the United States and send them to us in Barbados. We -- STC was Scientific Trading Corporation, and that was a New York corporation which was formed to act as the import-export agent. The materials which were purchased in the U.S. for ISL by Intersil were then registered by STC with U.S. Customs and shipped to Barbados. When we completed products, we then sent them back, STC would register the completed product coming back through and pay whatever duty was necessary.

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Q Would the duty be on the full sales value of the product or only the added on value?

A On the added on value. Under custom law and regulation there was a provision providing that the duty would be the difference the U.S. material cost and the ultimate selling price.

THE COURT: The value was created in Barbados, was it not?

THE WITNESS: That is correct. Yes, sir.

A In our case, that included all our overheads and

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costs plus our profit. The thing that was deducted from our selling price was the value of the material which had been registered in customs before being sent down to us.

Q Now, I believe Mr. Maloney mentioned in his opening statement that you hadsales of $250,000 in 1967 and sales of $835,000 in 1968. Was that a mistake on Mr. Maloney's part?

THE COURT: I am going to sustain the objection. If you want to ask him what the sales were, you can.

MR. McCONNELL: I think it was inadvertent.

Q Do you recall what the sales were for those two years?

A Yes. The sales for 1967 were approximately $125,000 and the sales for 1968 were approximately $417,000. The audited statement of the company showed about $250,000 for 1967, but that was $250,000 eastern Caribbean currency and that --

THE COURT: BWI's?

THE WITNESS: Also referred to as BWI's, British West Indies.

A Their dollar was worth approximately 50 cents of the U.S. dollar, so it was approximately double of what the U.S. dollar volume would be.

THE COURT: While you are on that, do you know

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what the sales volume was in 1969?

THE WITNESS: It was approximately one million one. A little under one million one.

THE COURT: And '70?

THE WITNESS: '70 would be after my termination period.

THE COURT: You don't know?

THE WITNESS: And --

THE COURT: If you don't know --

THE WITNESS: I don't know.

THE COURT: All right.

Q The sales in 1967 were 125, in 1968, 417 and one million one or a little less in 1969; is that right?

A That's correct.

Q Did there come a point in time in this business where you ran into some cash flow problems or cash problems?

THE COURT:Let's find out, I think perhaps before that, how did you capitalize this operation when you first started it out? You said there were three of you who organized this. How did you set that up?

THE WITNESS: Yes, sir. The three of us contacted friends and through ourselves and through our friends raised I think it was something on the order of a quarter of a million dollars which we thought would be sufficient.

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Unfortunately primarily due to the delay in getting into--

THE COURT: Was this through the sale of stock, is that what you did?

THE WITNESS: It was done through the sale of stock and the issuance of debentures of corporate notes which had attached to them a paper called a warrant which allowed the debenture holder an option to buy stock with that money. In effect he could turn his debt, his note into stock at his option. The original money was raised primarily through the debenture, although there was some outright sale of the stock, namely to the three investors.

THE COURT: The three founders?

THE WITNESS: The three founders, yes.

That 250,000 did not -- was not sufficient, as I say, primarily, I think, because of the delay of getting into the plant and getting into production. So, in 1968 we raised approximately five or six hundred thousand dollars more. A goodly portion of this money was by the sale of stock, although there were some debentures that were sold. Then subsequently in 1969 there was another two to three hundred thousand raised, again mostly by stock sale, although there were a few debentures as well. All of this ended up with about 38 shareholders, 8 to 10 of whom were employees of the company and all of whom were

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either personal or business associates of one or the other of the founders.

THE COURT: So, what would have been the figure, the total amount that you raised in these three stages?

THE WITNESS: It would have been between $1,000,000 $1,100,000.

Q But notwithstanding that initial capitalization or funding of the business and then the two furtner stock and debenture offers, did there come a time when you experienced a problem with not having enough cash to run this business?

A Yes. Initially this occurred during 1968. When I came down to Barbados and in the first few months of operations there, approximately 75 to 80 per cent of our business was done with customer material. The customer would supply us with the material and we merely assembled it according to his specification and design. By the end of 1968 and into 1969 that had reversed completely to the point where we were selling products in 75 to 80 per cent of the cases where we bought the material ourselves. Now, the profit potential obviously was greater in that situation, but the cash demand was substantially greater because now in 75 to 80 per cent of our sales, which had tripled in 1968 over '67, we were now having to buy the

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material, have it shipped down to Barbados, have it in process for anywhere from one to three months and then ship it back to a U.S. customer, or a Canadian customer, and normally wait 30 days for payment so that our cash needs accelerated very, very rapidly and as our volume was also accelerating we got into a cash flow problem. We were doing better, but it was costing us more to do better in terms of increasing the volume and we had to go -- that's what's forced us to go outside and get additional cash in 1968.

THE COURT: There was about a four-month lag, is that the way it turned out, between the time you had to pay for the material and the time you might be able to sell your product?

THE WITNESS: Yes. It would vary, of course, but I would say anywhere from two to four months.

THE COURT: It was that lag where you had to pay you didn't have the money coming in?

THE WITNESS: Yes. And, of course, at the same time our volume was increasing very substantially so that the money need was increasing tremendously.

Q But that assumed that the customer paid within 30 days after you billed them?

A Yes, and this was generally the case in 1968.

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Q Did that situation change?

A Unfortunately it did. The money crunch of 1969 occurred about mid-year and it had two effects upon us: the cost of money, of course, went up quite considerably, interest to pay on borrowed money climbed very rapidly and our suppliers were demanding immediate payment or payment upon delivery to us because they needed the cash and we were an out of country buyer and they wanted to get their money in hand before shipping, so we lost the normal 30 to 60-day lag we could have had in paying for some of this material, and our customers at the same time were not paying us in 30 days -- such customers as IBM would wait 60 to 90 days to pay us. So, this expanded the period of time in which we had money outstanding by way of materials that we were not receiving back. This is what created our money crunch in 1969, which ultimately forced us to talk sale of the business.

Q All right, let's go to that subject now. Did there come a time when you entered into discussions with a company called Data 100--

A Yes, sir.

Q -- relative to the possible sale of this business?

A Yes, sir.

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Q When was that?

A It started in August of 1969. Data 100 was a relatively new company formed in Minneapolis which manufactured peripheral equipment for computers and the man -- their man in charge of acquisitions had talked to us some time earlier when he was employed by Control Data, a large manufacturer of computers. At the time he was with Control Data he asked if we were interested in being acquired and we said we were not and then in August of '69 he called saying that he was with a new company that was interested in expansion and in acquisition and would we be interested in talking to him. We said yes.

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Q All right. And did you proceed with discussions with Data 100?

A Yes, sir.

Q What was the result of those discussions?

A I went up to Minneapolis and met with the president and the treasurer of that company. They sent their acquisition man down to Barbador and ultimately an offer was made by them to acquire us, which we discussed with them and ultimately reached an agreement with them in September, 1969. This all occurred within a 30-day period.

Q What was the Data 100 offer?

A They were going to give us $500,000 in their stock as a down payment and approximately or a potential of about $5,000,000 more in stock, depending upon our earnings over a three-year period.

In addition, they were going to put $500,000 capital into the company to attempt to relieve the cash flow problem.

Q In connection with the Data 100 offer, was there also an arrangement worked out whereby you could get some immediate cash?

A Yes. This cash crunch was a very serious thing and we told them that we needed at least $200,000 immediately

Q What was done to get that?

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A There was going to be certain delays that had to be resolved. There was an audit and this type of thing that would have to take place and they said that while that was taking place they would loan us $200,000 to show that they were sincere in wanting to go through and to keep us afloat until the sale was completed.

They asked that the three founders, myself, Johnson and Van Bellingham, put up all our stock in the company as security for that loan, which we did. We got the $200,000 in September, late in September, the first part of October.

Q Now, did Data 100 later withdraw from the deal?

A Yes, sir.

Q When did that occur, approximately?

A In November of 1969.

Q When was your first contact with the Plessey Company?

A When Mr. Sinsheimer called me on, I think it was, December 3rd of 1969.

THE COURT: Where were you then?

THE WITNESS: I was in Barbados in my office.

Q Before we get to that, by this time can you tell us some of the customers that you were doing business with? I am talking now about the fall of 1969.

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A Yes, I mentioned IBM, Hewlett Packard, Honeywell, Collins Radio, General Electric, Nuclear Chicago, Nuclear Data. There were somewhere between 20 and 25 customers, most in the U.S. We had one or two customers in Canada.

Q I show you what has been marked Plaintiff's Exhibit 71, which is the so-called matrix plan, dated September 26, 1969, and direct your attention to page 2 thereof, which lists a number of companies, and ask you which of those listed --

THE COURT: Are you going to offer the matrix plan?

MR. McCONNELL: Yes, I am.

THE COURT: Have you any objection?

MR. MALONEY: No, your Honor.

THE COURT: Let's put it in evidence and get that over with.

xx (Plaintiff's Exhibit 71 received in evidence.)

Q And ask you which of the customers of computer firms listed therein were already customers of International Scientific Limited?

A IBM, General Electric, Honeywell, SEL, I believe--

THE COURT: What is SEL? It sounds like SEC, but it isn't.

THE WITNESS: No, it is the name of a company.

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I believe it was Scientific -- I am really not sure what the initials stood for. They went by SEL and I really don't recall.

THE COURT: All right.

A (Continuing) Standard Computer is noted here and that may be Standard Memory.

MR. MALONEY: I will object to that, your Honor.

THE COURT: No, not unless you know.

A (Continuing) Varian, Documentary Sciences, Collins Radio, Raytheon, Hewlett Packard. I am not sure of General Automation and I am not sure of Micro-Systems. I think both of those were.

THE COURT: Don't think. Tell us if you know.

THE WITNESS: I am not sure.

THE COURT: Okay.

Q I want to go back to the two companies that you mentioned, your purchasing agent, Intersil, and the import-export agent, STC Corporation. Did those corporations actually perform the purchasing function and the function with the customs people?

A Not really. The way it worked was that we hired a customs broker in New York and asked him to perform, not only the custom broker functions that he normally performed, but to perform that function as STC

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for a fee and to perform our purchasing function for us as Intersil, also for a fee.

Neither of those two corporations had any employees. They, in fact, employed the customs broker to perform their duties.

Q Now, you started to tell us of a conversation that you had with Mr. Sinsheimer in early December of 1969. Did you call him or did he call you?

A He called me.

Q Can you give us, as best you recall, what was said in that conversation by Mr. Sinsheimer and by yourself?

A He said that he had heard that we were available for sale and wanted to know if that was true.

I said that it was.

He wanted to know if I thought that we could be competitive.

And I told him that I definitely believed that we could.

THE COURT: What did you understand him to mean by that?

THE WITNESS: Whether our costs were such that we could compete in the U.S. market.

The type of work that we were doing was primarily being done in the Far East, in Hong Kong, Taiwan and Singapore

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and also in Mexico and so we were competing not against U.S. labor rates, but we were competing against the Far East and Mexico.

Plessey itself, he told me, had manufacturing assembly facilities in Lişbon, Portugal and in Malta and he wanted to know whether I thought our operation would be competitive, our costs, with such operations as that.

I advised him that I believed we not only could be, but that we were and that we were, in fact, in the U.S. market and were growing and we thought that the price structure was such that we would be able to make money.

He asked if he could send someone down to check out the plant.

I said that he could.

He told me that I should expect to be hearing from his chief financial man, Mr. Milton Albert.

I told him that I was going to be up in New York the following week and so we made a tentative date to get together when I was in New York.

Q Did you go to New York and did you get together?

A Yes.

Q Where did that meeting take place?

A Mr. Sinsheimer's office.

Q Can you recall the date?

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A I believe that that was the 9th of December.

Q Was anybody else present?

A No, sir.

Q Just you and Mr. Sinsheimer?

A That is correct.

Q Would you give us that conversation?

A In the meantime I had talked to Mr. Albert, who had called me in Barbados, and he had asked that I send him our last audited statement, which would have been for the year 1968, and any unaudited statement, the most recent unaudited statement that we had.

Q By "statement" you mean what?

A A report of our financial condition.

I instructed our chief accounting man, Mr. Hourihan, to send him that material.

When I went in to see Mr. Sinsheimer, I had with me a short report that I had prepared on a description of our enterprise and I gave that to him. It indicated, amongst other things, how we saw the market, what we believed was the potential in the business and what we had done to date.

He indicated to me that, if anything, he thought we were being somewhat conservative in our estimate of the market and he showed me a report that he had in which

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the U.S. market figures were indicated. He showed me a one-page report of it and he said it was their intention to enter the U.S. market and he felt that they, Plessey, could establish themselves as a part of the memory business in this country.

Q What else was said in that conversation?

A He expressed surprise that as an officer or company, as a company that was located outside the U.S., that we had been able to make as much progress in the U.S. market as we had.

As I mentioned, we had something like 20 to 25 U.S. customers. He said that they, Plessey, had attempted to penetrate the market, but had been rebuffed primarily, he thought, because they were an offshore company, an English company, and that the U.S. buyers were expressing suspicion that they would be able to get delivery and the quality from a foreign company.

I explained to him the reason I thought we had been successful is that we were operating, although in Barbados, as a U.S. company. We had U.S. marketing people. We had U.S. engineers who would call on the customers along with the marketing people and [illegible] had a very short turnaround, a short communications turnaround between Barbados and the U.S. It was only a four-hour flight from

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New York and we had a telex setup so that there was immediate telephone, telex as well as personal communication available.

I indicated that because of that we had not experienced the difficulty that, apparently, they had.

Q Was anything further said about the possible acquisition of ISL by Plessey?

A Yes. Mr. Sinsheimer indicated that they were definitely interested and that he would like to send an engineer down to check out our facilities to see whether we had the capabilities that I had indicated I thought we had.

I agreed that we should do so.

He also said he was going to ask Mr. Albert to go down and check over our financial situation.

Q Was there anything else said at that conversation that you recall?

A Well, it was a conversation of about an hour and a half or so, so other things were said. Right offhand I don't recall.

THE COURT: That is all you recall at the present time about it?

THE WITNESS: Yes, sir.

Q Now, did Plessey's financial man, Albert, in

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fact, come to Barbados?

A He did.

THE COURT: When was that?

THE WITNESS: The following week Mr. Albert and a Mr. Osborne, who was identified as their head production man from Malta, production and engineer, both came to Barbados. I was in the States and I instructed Mr. Hourihan, who was next in control in my absence --

THE COURT: How does he spell his name?

THE WITNESS: H-o-u-r-i-h-a-n.

A (Continuing) To make sure that both of these gentlemen got everything, all the information that they were looking for.

They spent, I think it was, three days in Barbados.

Q Did you have some further meeting with Mr. Sinsheimer?

A Yes.

Q Can you fix the date, approximately?

A It was the 16th of January -- I mean of December I met with Mr. Sinsheimer and our attorney, Mr. Shapiro.

Q Where did that meeting take place?

A That also took place in Mr. Sinsheimer's office.

Q Was anybody there besides Mr. Sinsheimer for

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Plessey, do you recall?

A No, sir; I don't believe so.

Q What was said in that meeting?

A Mr. Sinsheimer indicated that Mr. Osborne was on his way to Barbados and that Mr. Albert was also either on his way or was leaving the next day and wanted to know what we thought the business was worth.

THE COURT: This, I take it, Osborne and Albert had been there before and they were going back a second time?

THE WITNESS:No, this would have been the first time.

THE COURT: This was the first time, all right.

A We indicated at that meeting that we thought a rock bottom price would have been $2.8 million dollars.

Sinsheimer said that he thought that was far more than he would be interested in paying; that he was thinking on the order of a million.

We indicated that that figure was totally unacceptable to us. It was a general converstion and we did not get into specifics. It was more or less a sounding out, I think, from both of us to see what the other was thinking of as to price.

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Q Was anything said by you as to how you arrived at the two million eight figure?

A Yes. I explained to him that we were selling really our future. We knew very well that our past was not going to justify any high price, because we had not yet become profitable on an annual basis. We were selling the future.

He knew, and I told him, confirmed of what he already knew, as to how much Data 100 had offered, and, obviously, what they thought it was worth. And I said in the meantime the deterioration of the business was such that we were willing to sell for less, but we felt two million eight hundred was the rock bottom price, because it was at that price that all of our investors would get out their investment.

Q Can you explain that, because I think you said earlier the total investment at that point was a little over a million or a million one.

A Of course, the initial stock went at less than a dollar per share. As we got additional investments in over the period of the next two and a half years, we increased the price, so that at the last go-around of getting outside money in, the stock was in at $5 a share. In order that the last investors who had put in $5 a share

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would get their money out, we would have to get 2.8 million; it would mean, obviously, that the initial people , myself included, would make money, but the last investors would, at least, clear what they had put in.

Q Was anything said by Mr. Sinsheimer as to how he arrived at the million dollars?

A He said that he had thought that the million would be what they would spend as a startup of their own operations. They had been looking to Brazil, they had been looking to Mexico for their own off-shore facility for the United States business, and that he had thought he would save at least a million by buying us, and that is what what he thought we would be worth to him.

Q Now, at that meeting was any agreement reached on price?

A We were pushing for more, and Mr. Sinsheimer indicated that he was going to England and he would talk to the Board. His million was not really in the form of an offer; this was a discussion, really, at that point.

Q When is the next meeting that you recall , negotiating meeting, that you recall with anyone?

A Well, Mr. Shapiro spoke with Mr. Sinsheimer on the phone several times after that meeting and then

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called me in Barbados to report. But the next meeting took place oh, I think it was January 5 or 6, again in Mr. Sinsheimer's office. This would be January of 1970.

Q Let's go to the January 6 meeting.

THE COURT: January 5 or 6.

Q 5 or 6.

A It was a Tuesday, I believe. Do you have a calendar?

Q I have a calendar, but I don't have it here. It doesn't matter. It is either the 5th or 6th. Who was there?

A Mr. Sinsheimer and Mr. Eric Frey.

Q Who is he?

A He was identified as the chief financial man for Plessey, the parent company Plessey, Plessey England. Mr. Albert was the chief financial man for Plessey in the United States. And Mr. Shapiro and myself, and I believe Mr. Shapiro's partner, Mr. Lewis, was also present at that meeting.

Q Can you give us as best you recall the conversation that occurred at that meeting?

A Mr. Frey made an official offer to us which was in the form of shares of stock in Plessey, England, the parent company, the value of the stock, and in terms

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of United States dollars made the offer about $1,400,000, to my recollection, and he indicated that this was contingent upon our earnings for the year following the purchase.

We indicated unhappiness with the amount, and there was some question as to whether English stock would be subject to a special tax in the United States, and there was some general discussion as to the possibility of the stock being United States stock, stock in the United States company, rather than in the English company.

There was also some talk on the possibility of the payment being in cash, rather than in stock. But the offer at that point, really, was in terms of English stock. We indicated that we thought there should be more, and we indicated that we didn't believe that the full amount should be contingent, that there should be part of this payment at the front end and, the meeting, I believe, broke up on the basis that I would have to go back to our Board to see whether there was any sense discussing it further.

THE COURT: Who was your Board at that time, sir?

THE WITNESS: Mr. Johnson was on the Board, Mr. VanBellingham and Mr. Raymond Carlen, who was then and

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is now president of Ryerson Steel Company, and Mr. Lawrence Haggerty, who was then and is now a management consultant and has his own firm.

I think that that meeting had broke up on the basis that we would have to talk to our Board.

Q What is the next thing heard from the Plessey people as far as the amount of the offer?

A Well, we had pressed for more, and Mr. Sinsheimer indicated that he was going to a Board meeting in England on either that day or the next day and that he would get back to me and let me know what the final word was, whether there was any possibility of anything more.

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THE COURT: So it was left that both of you would go back to your Boards?

THE WITNESS: In effect, yes, sir.

The 9th of January they sent a cablegram to me from England indicating that one million four was their top price, that his Board would go no further.

Mr. Sinsheimer was a member of the English Board, of the parent company's board of directors, and he was the managing director of their all non-English operations, and he was president of Plessey United States. And at that time he responded in behalf, in effect, of

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the English Plessey, saying that their Board would not go beyond one million four. I think this was Friday that he sent me the cable.

I was staying at the New York Athletic Club, and I didn't get the cable. And Mr. Albert called me to tell me he wanted to get together with me, and told me, actually, the figure before I saw it in the cable. Mr. Albert indicated in the phone conversation that he thought that a down payment, a small down payment, might be possible to work out, and we scheduled, I think, a breakfast meeting the following day, which was Saturday.

THE COURT: We will take a five-minute recess.

[Short recess.]

BY MR. MC CONNELL:

Q Mr. Kovar, you were about to tell us about a Saturday morning breakfast meeting with, I believe, Mr. Albert that you had?

A Yes. I think it was that following morning, which I think would have been the 10th of January. There was a general discussion, at which Mr. Albert indicated --

THE COURT: Where did this take place? In New York?

THE WITNESS: Yes, it was at the New York

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Athletic Club dining room. And he indicated that he thought that a small down payment might be possible. He didn't indicate any specific amount. But he thought that it might be possible to arrange, and also indicated that he thought it was possible that it might be in cash, rather than in stock, at our option. He indicated that he agreed that $600,000 infusion was necessary.

THE COURT: How did that $600,000 come up?

THE WITNESS: I did forget something. I guess that the initial meeting with Mr. Sinsheimer, my initial meeting with him, I indicated to him that I thought the company needed approximately $600,000 in additional capital. This is one of the things that he wanted Mr. Albert to check on when Mr. Albert went down to Barbados. And when Mr. Frey made the initial offer subsequently of the Plessey stock in the amount of one million four, that offer included the infusion of $600,000 interest free to their company.

THE COURT: I suppose these are B.W.'s?

THE WITNESS: No, United States dollars. I will try to use United States dollars at all times. If not, I will try to identify it as such. It was one million four in United States and $600,000 in United States.

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The conversation was again a fairly general one. And he indicated to me that he thought that Plessey was a good company, that we would enjoy being a part of the Plessey organization, and that I personally would enjoy it, as he had. He indicated that he had been an outside independent auditor.

THE COURT: Is Albert an Englishman or an American?

THE WITNESS: He is an American. He had been an independent auditor with his own firm, at least, a partner in an independent firm, and had been hired by Mr. Sinsheimer apparently within a year or so prior to this, and he had told me his experience had been a very pleasant one, and he thought that personally and professionally it would be a good association. And I believe we arranged for a social engagement that evening. I think that was that Saturday, but there was no business talked that evening.

Q When is the next negotiating session with the Plessey people?

A The following week, I believe, I met, along with Mr. Shapiro, with Mr. Albert and with Mr. Dubin, again in Mr. Sinsheimer's office, though in his absence.

Q Who is Mr. Dubin?

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A Mr. Dubin was a partner of Mr. Sinsheimer's law firm and was acting as the counsel for Plessey. The Plessey offices, Plessey United States offices were in Mr. Sinsheimer's law offices.

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THE COURT: You say Mr. Sinsheimer was a lawyer in a law firm here in New York?

THE WITNESS: Yes. I think it's Sinsheimer-- or it was Sinsheimer, Sinsheimer & Dubin, and the offices of Plessey U.S. were in his law offices. When I referred to a meeting in his office, it was actually the corporate office as well as his law office. We met to discuss the terms of the agreement. We had not formally accepted the offer at that point.

Q Would this be the January 14th meeting?

A Yes, sir.

Q Tell us what was said at that meeting.

A Mr. Albert's remarks to me -- his earlier remarks to me were confirmed in that they said it would be our option as to whether it would be dollars or stock and they specified at this point a $180,000 down payment or stock equivalent. My recollection is that our main point that we raised was as to control -- the management of the firm during the earn out period, which was really a twofold matter: one was my own personal employment contract and, two, was the right of ISL management -- primarily me, but also our board, of course, to retain managerial control during the earn out period. Mr. Albert indicated grave doubt as to whether Plessey would agree to that, to either

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request on our part. He said that it was not the policy of the company -- of Plessey Company to provide employment contracts to anyone; that he himself did have one, but he was unique because he had been hired from an outside auditing firm and that he had asked and had gotten an employment contract, but he thought he was the only one who did have one. And as to the management -- the managerial control of the company, he said he thought Plessey would want to retain that control putting in that much money. There was no resolution of that issue at that time.

Q Does that exhaust your recollection as to that particular meeting?

A Yes. This was a longer meeting. It lasted-- I think it lasted pretty much of the day and we were discussing a number of the terms of the contract, but the thing that stands out in my mind are those two points.

Up to this point had there been any drafts of contracts?

A No.

Q At that time was there anything said about drawing up a contract now?

A Yes. At the conclusion of the meeting Mr. Dubin said that he would draft a contract and that he would send

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it to us and would do so as quickly as he could.

THE COURT: When you said send it to us, what do you mean by that?

Was Mr. Shapiro at this particular meeting?

THE WITNESS: Either Mr. Shapiro or Mr. Lewis or possibly both of them.

THE COURT: Both of them.

THE WITNESS: I am positive that Mr. Shapiro was present, but I'm not sure now --

THE COURT: He was your lawyer in connection with any agreement you might reach?

THE WITNESS: That's correct, and Mr. Lewis was his partner. They were both Chicago attorneys, and Mr. Dubin was going to mail them a copy of the draft with a copy to me down in Barbados.

THE COURT: I see.

Q Did Dubin prepare a private draft contract and did he in turn mail it to both you and Mr. Lewis or Mr. Shapiro?

A Yes, he did.

Q I show you what has been marked Plaintiff's Exhibit 1 and I ask you if you can identify that as the first draft of contract.

A Yes.

Q Do you recall when that was sent to you and your attorneys, how long after this meeting?

A It was within a matter of a few days. I think that I got in Barbados -- it may not have been until around the 23rd of the month.

MR. McCONNELL: I offer in evidence at this time, your Honor, Plaintiff's Exhibit 1.

THE COURT: Any objection?

MR. MALONEY: Your Honor, we have no objection to the typewritten material. I believe this copy contains Mr. Kovar's handwritten notations and I would object to those at this point.

THE COURT: Does yours contain those?

MR. McCONNELL: Yes.

THE COURT: Let me see them.

Who did all this underlining in this thing?

MR. McCONNELL: I'm afraid that's me.

MR. MALONEY: Your Honor, I have a copy--

MR. McCONNELL: If we have a clean draft, we will substitute it.

THE COURT: I think I will receive this, but if anybody wants to show this to the jury, I would like a clean draft.

MR. McCONNELL: We have that problem with a

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number of the exhibits.

MR. MALONEY: We have a clean one and we can supply it. I believe we can also fix the date of transmittal. I believe the transmittal was January 16th.

THE COURT: So you wouldn't have gotten it in Barbados for several days after that?

THE WITNESS: If they were dated the 16th, I probably got it the 19th. The mail was generally two days, maybe three.

xx (Plaintiff's Exhibit 1 received in evidence.)

MR. MALONEY: I understand, your Honor, it's received only as to the typewritten material?

THE COURT: That's right.

MR. McCONNELL: We are going to substitute clean drafts.

THE COURT: If it's to be shown to the jury -- I am fortunate, because I can't read all these interlineation which you probably could, so I want a clean copy for the jury.

Q All right, now, referring to the first draft and the last three lines thereof on page 1, what does that provide as to the ISL name?

A Well, that we were selling the name of the company as well as all of it assets.

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Q Did Plessey request that?

A Yes.

Q Jumping ahead of the story here a little bit, is that the reason for the change in your name from ISL to SHC?

A That's correct.

THE COURT: His name isn't ISL. I don't understand that question.

Does that mean you changed the name of your company in Barbados?

THE WITNESS: Well, because we sold the assets and the liabilities -- we still had the corporation.

THE COURT: The Barbados company?

THE WITNESS: Yes, but having sold the name ISL, we had to change the name of the corporation.

THE COURT: You changed the name in Barbados to what?

THE WITNESS: Scientific Holding Company. The assets then of Scientific Holding would have been the $180,000 down payment plus the contract with Plessey.

Q Referring to paragraph 5 on page 5 of the first draft, what does the contract provide as to who is to manage the business during the measuring year?

A Plessey.

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MR. MALONEY: Your Honor, at this -- well, withdrawn.

THE COURT: Wait a minute. I think if you are objecting to the last question I think I am going to sustain the objection.

MR. MALONEY: Yes, your Honor. There is no question that under the first draft Plessey would have controlled the business, but I think we are getting into serious areas now where if the words don't appear on the page the witness is interpreting the contract and it is not provided on the page.

THE COURT: Yes. I think the contract will have to speak for itself on that.

Q Who did you understand was to have management control of the business during the measuring year under this draft?

A I understood that Plessey itself -- English Plessey, or a subsidiary of English Plessey, would control and manage ISL.

Q Would you now refer to paragraph 5C. What did you understand that to provide so far as continuation of the contracts with your sales representatives?

A I understood it that they were-- they, Plessey, were agreeing to continue our representatives only for

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a period of six months. This was one of the points that was raised in our discussion with Mr. Dubin and Mr. Albert.

THE COURT: Let me see counsel a minute on this thing.

(At the bench)

THE COURT: This is confusing me a bit.

MR. MALONEY: I think if we could bring it out, your Honor, on this copy --

THE COURT: On my copy it says the agreement is going to be continued for the measuring year --

MR. MALONEY: That's not the copy of this exhibit, then.

MR. McCONNELL: I'm sorry. What have you got?

THE COURT: You told me it was Exhibit 1.

MR. McCONNELL: Let me see the marking, your Honor.

MR. McCONNELL: I think you gave him the second draft.

MR. McCONNELL: I gave you the second draft, I'm sorry.

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(In open court.)

THE COURT: I'm sorry, ladies and gentlemen. They gave me the wrong paper.

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MR. McCONNELL: I think this will help. We are on paragraph 5-- on page 5.

THE COURT: Okay. Now I think having the right document I can follow this.

Q After the first draft, were there some further negotiations with the Plessey people as to what the provisions should be--

A Yes, sir.

Q -- in whatever contract was finally adopted?

A I spoke woth Mr. Lewis on the phone. I was in Barbados and Mr. Lewis was in Chicago. I went over the first draft with him and indicated to him where I saw problems and what language I thought had to be changed. He then continued negotiation with Mr. Dubin.

THE COURT: By the way, in those old days when you practiced law, what kind of law did you practice?

THE WITESS: I practiced -- almost all my time, 99 per cent of my time was in the field of labor-management relations.

THE COURT: Labor-management relations?

THE WITNESS: Yes, sir.

THE COURT: Did you write labor contracts?

THE WITNESS: Yes, sir.

Q I show you what has been marked Plaintiff's

Exhibit 2 and ask you if you can identify that as the second draft of contract.

A Yes, it is.

THE COURT: Is there any objection to Exhibit 2 except for the same ones we had before?

MR. MALONEY: No, sir.

THE COURT: All right, then, we will receive Exhibit 2, subject to introduction of a clean copy.

(Plaintiff's Exhibit 2 received in evidence.)

Q Do you know when the second draft of contract was received either by you or your lawyers?

A I believe it was received by Mr. Lewis on or about the 28th of January and I received a copy when I got up to New York. I went to Mr. Dubin's office and received a copy on the 29th, I think it was. I think that was a Friday.

Q Referring to paragraph 5D on page 5 of the second page of the draft, which reads "The present management of ISL shall operate the business during the measuring year and shall have the maximum freedom to operate the business in a manner which will produce in the judgment of such management the maximum profit available, provided, however, that any policy directive issued by directors of Plessey shall be complied with."

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I am just stopping there.

Who did you understand that to mean to give management to?

A To the ISL management, namely myself and my boy.

Q Reading on, "Should Plessey propose any course of action which would be detrimental to the profits during the measuring year, ISL management shall have the option of requiring, prior to commencement of such a course of action, that the net additional expenditure of ISL in pursuing such course, over and above what it would have incurred if it had not pursued such course, be excluded in determining profits." Then there is this provision which I want to direct your attention to, but I wanted to read the entire paragraph. "Notwithstanding the foregoing, if ISL profits are not at least $15,000, U.S. dollars, per month in any full month commencing with the third calendar month of the measuring year, this subparagraph shall no longer apply and Plessey shall have the right to assume management responsibilities. In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in good faith."

Now, first of all, what was your understanding as to the profit goals that you had to obtain under this provision and how much time you had to attain those goals?

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A Well, it was my understanding that we would have to have a profit of $15,000 in the third month of the measuring year and that if we did not, then Plessey had the option of assuming management.

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Q Following receipt of the second draft, which contained the provision that we have just read, were there some further discussions or negotiations with Plessey as to the provisions which should be in this agreement?

A Yes, sir, Mr. Lewis again had communicated with both Mr. Dubin and Mr. Albert prior to my seeing the second copy, after he had gotten it but before I got up to the States to see it.

When I received the copy those conversations had already taken place. I spoke to Mr. Lewis on the phone, who was then on the West Coast, about his conversations with Mr. Albert and Mr. Dubin.

Q As a result of the conversations back and forth between the attorneys, was there some further agreement reached?

MR. MALONEY: I would object to that, your Honor.

THE COURT: I think I will sustain the objection. Was there any agreement reached. He can tell us what happened.

Q Was there a further draft of contract?

THE COURT: Was there another draft?

THE WITNESS: Yes, sir.

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THE COURT: Okay.

Q I show you what has been marked Plaintiff's Exhibit 3 and ask you if you can identify that as the third drafted contract?

A Yes, sir; it is.

THE COURT: I think I would rather let the jury stop worrying whether it was the third draft. Was it the final contract that was signed on February 4?

THE WITNESS: Yes, sir.

MR. MC CONNELL: It is the final contract signed, but then there were some amendments to it.

THE COURT: I thought the jury would like to know that.

JUROR NO. 1: Excuse me, Judge, did you say contract or draft?

THE COURT: They called it a draft, but this was what was actually signed. This was actually the one that was signed. I wanted to tell you that.

JUROR NO. 1: Thank you very much.

THE COURT: Okay.

Q Well, turning to the back page, Page 24, does that show your signature on behalf of International Scientific Limited?

A Yes.

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Q Who signed for Plessey Company, Ltd.?

A Mr. Sinsheimer.

Q The date of that agreement is what?

A The 4th of February 1970.

THE COURT: I notice this exhibit has a letter attached to it from Mr. Dubin to Mr. Lewis. Mr. Lewis was your lawyer, was he?

MR. MC CONNELL: Yes.

THE COURT: That is also dated February 4th?

MR. MALONEY: Your HOnor, if I could see what the attachments are, it may be more convenient to keep them all together. I think they are all the amendments and if we could compare our copy --

THE COURT: I wanted to find out, this was dated February 4 and where was this contract signed, sir?

THE WITNESS: In Mr. Sinsheimer's law offices.

THE COURT: Here in New York?

THE WITNESS: Yes.

THE COURT: Do you see this letter that is attached to the contract -- have you got it -- from Mr. Dubin to Mr. Lewis, dated February 4?

THE WITNESS: I believe this was sent afterwards and that I saw it later. I did not see it at the time.

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THE COURT: This was not something that you had when the contract was signed?

THE WITNESS: That is correct.

MR. MALONEY: Your Honor, are we leaving it attached to the exhibit?

THE COURT: I don't think it should be if it is not a part of the contract.

MR. MALONEY: Whichever is more convenient. There is no dispute that this letter became part of the agreement, your Honor.

THE COURT: I think it ought to be marked separately. I would like the agreement itself and then if there are going to be any amendments, I would like them marked separately and that way the jury and I can keep track of it if we do that. All right.

Q Now, referring to Paragraph 5d and the language which reads:

"Notwithstanding the foregoing, if ISL profits commencing with the third calendar month of the measuring year average at least $15,000 per month and if there has not been three consecutive months of losses during that measuring year (excluding the first two months thereof), this subparagraph shall no longer apply and Plessey shall have the right to assume full management responsibilities.

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In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in good faith."

Did you understand --

THE COURT: No, don't tell him do you understand. Ask him if he understands.

What does that mean to you?

THE WITNESS: It meant to me that Mr. Dubin had put in--revised the contract, pursuant to our request, that rather than the profit minimum being $15,000 in the third month, that the test would be an averaging of $15,000 per month commencing with the third month and that after I received this copy of the second draft --

THE COURT: As I understand what you are saying, it is if the third month, say, was 5,000, there wasn't anything to average because there was just one month, is that right?

THE WITNESS: That is right.

THE COURT: You say it went on for another month?

THE WITNESS: Correct.

THE COURT: That is what you thought it meant?

THE WITNESS: Yes.

A [continuing] After I received the second draft I

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had met with our Board on Saturday and then the following MOnday I met with Mr. Dubin to indicate to him what changes my Board wanted before agreement and one of the things we wanted was an averaging provision, rather than the 15,000 in the third month, as he had it in the second draft, and it was my understanding that his language in 5d reflected his agreement, Plessey's agreement, with our request.

Q I show you what has been marked Plaintiff's 4, which purports to be a copy of a letter under date of February 18, 1970, from Mr. Julius Lewis to Mr. Seth Dubin of Sinsheimer, Sinsheimer & Dubin, and I ask you if you have seen that document before?

A Yes, sir.

Q Do you know what the occasion was for that?

A Yes.

Q Would you tell the Court and the jury?

A Well, the rewriting of Section 5d by Mr. Dubin did not really say what anybody intended.

MR. MALONEY: I would object to Mr. Kovar's characterizing who rewrote the provision that went into the contract at this time unless we have some testimony that that is his personal knowledge. We all know what the contract says, but I don't think there has been any

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6/17 testimony so far as to who formulated that language.

THE COURT: I think this is all a play on words because all I gather out of it is that whoever drafted the original contract made a mistake and this is corrected.

Is that right?

THE WITNESS: Yes, sir.

6/2 THE COURT: I don't know why we make a big thing about it. We have heard all about these great lawyers and all I can read in this, great as they were, they made a mistake and the purpose of that letter was to correct it. It really doesn't make much difference. Both sides recognized that?

THE WITNESS: Yes, sir; it was just a matter of putting in too many negatives or a negative in the wrong place.

THE COURT: Both parties signed a contract that didn't make any sense and it was correcting it, isn't that correct?

THE WITNESS: Yes, sir.

THE COURT: Let's not make a big thing about it. That is what happens even with lawyers who become businessmen.

THE WITNESS: Yes, sir.

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Q But what was your understanding as to the period of time you had to make average profits of $15,000 under Paragraph 5d as corrected by Plaintiff's Exhibit 4?

A To me it meant that we had to June and July to average $15,000 per month and to the profit picture we could add anything that might have been made during April or May, highly unlikely as that would have been.

THE COURT: You just testified a minute ago that you didn't have to average because you had two months. That is your point?

THE WITNESS: Yes, sir.

THE COURT: You say there was nothing to average until you had two months?

THE WITNESS: That is correct.

THE COURT: You haven't offered Exhibit 4. I don't suppose there is any objection to receiving Exhibit 4?

MR. MALONEY: No.

MR. MC CONNELL: I do offer it, your Honor.

THE COURT: Let's put it in.

*** [Plaintiff's Exhibit 4 received in Evidence.]

MR. MC CONNELL: I offer 3, too, your Honor.

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THE COURT: All right.

[Plaintiff's Exhibit 3 received in Evidence.]

Q You testified a little earlier that you had a meeting of your Board of Directors. Do you recall the date of that meeting?

A It was a Saturday, and I think that was January 30th.

Q I show you what has been marked Plaintiff's Exhibit 8 and ask you if you can identify those as the minutes of the Board meeting?

A I can and it leaves me to correct my answer. It was the 31st of January rather than the 30th.

MR. MC CONNELL: I offer Plaintiff's Exhibit 8 in Evidence.

MR. MALONEY: No objection, your Honor.

THE COURT: All right, it will be received.

[Plaintiff's Exhibit 8 received in Evidence.]

THE COURT: I would like to ask the witness one question going back to Exhibit 4. Again, all these lawyers, Mr. Lewis writing something and it is signed by Mr. Dubin, did that refer to your Board or was that just signed?

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THE WITNESS: Well --

THE COURT: Did you tell them about it or what happened?

THE WITNESS: Yes, we subsequently discovered what we assumed to be a typographical error and then subsequently, I think it was Mr. Dubin who called Mr. Lewis to say that if they preferred to have U. S. Plessey take the contract rather than England, because of some problem, apparently, with the Bank of England, money going outside the United Kingdom, and that was quite agreeable to us.

We had earlier discussed it and had indicated that we didn't care whether it was U. S. Plessey or English Plessey.

THE COURT: As far as this letter was concerned, this was done by the lawyers?

THE WITNESS: Yes.

THE COURT: You fellows had signed something with a typo in it and the lawyers straightened it out. Is that the way it happened?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q Referring to the minutes, which are Plaintiff's Exhibit 8, at Page 3 thereof:

"Thereafter the Board of Directors reviewed and discussed a proposed agreement between the Plessey Company Ltd. and the corporation providing for acquisition of the corporation's assets less the demand note of Victor L. Johnson and the assumption of the corporation's liabilities, less the ten-year corporate debentures and Mr. Carlen moved and Mr. Johnson seconded the following Resolutions,which were unanimously carried."

Let me interrupt there for a minute, Mr. Kovar. What was done with respect to the debentures?

A We offered the debenture holders the option of converting their debentures by way of the warrant that was attached to stock or to waive the warrant and to stand as a creditor, a holder of the debenture, and that was part of the communication we then had with the debenture holders.

Q I take it under the agreement with Plessey they were not speaking of the obligation to the debenture holders.

A That is correct.

Q Now, to the Resolution itself:

"That the Directors of this corporation hereby approve and recommend to the shareholders of this corporation for their approval the sale to the Plessey

Company, Limited of all the assets of this corporation, subject to the assumption by the buyer of certain liabilities of this corporation, as set forth in the aforementioned agreement, on receiving the approval of such sale by the holders, three-quarters of the outstanding shares of Class A stock of this corporation, the execution and delivery of that agreement by certain officers on behalf of the corporation is ratified, confirmed and approved and the proper officers of this corporation are authorized and directed to make such changes in that agreement as in the opinion of the Directors shall be necessary or appropriate..."

THE COURT: What does that mean?

MR. MC CONNELL: That is the question.

THE COURT: It doesn't mean anything, obviously. It is just another of these mistakes in drawing these papers with all these lawyers. It doesn't make any sense at all.

Q What did you understand to be the limit of your authority under the Resolution?

A Well, we had draft No. 2, the one that I picked from Mr. Dubin's office, that was the contract that we had. We discussed several revisions that we required before agreeing to it and it is my understanding

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that the language that you are referring to in the Resolution of the Board covered that situation and, in effect, told me that I was authorized to make these changes in this draft No. 2 that the Board had instructed were necessary at that meeting of the 31st.

Q Following thesigning of the February 4 agreement, when was the closing dateprovided for in the agreement?

A March 2.

Q Was that filled in in the agreement?

A Yes.

Q Now, between the signing of the February 4 agreement and the March 2 closing, did any Plessey personnel visit Barbados?

A Yes, sir.

Q Who would that have been and when?

A Mr. Clarke, who was the president of Plessey Electronics, a subsidiary of Plessey - United States, and Mr. Crocker, who was the chief manager of the Electronics or a division of Plessey in England, which division included their memory product operations.

I believe Mr. Sweeney also came to Barbados -- he was a controller, I believe, or financial man, in any event, from Plessey -- and I think Mr. Albert.

Q How long were Clarke and Crocker there? Do you

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remember?

A On the order of three days. It might have been four.

Q Was Mr. Albert there at the same time or had he come on a different time?

A Mr. Albert, I believe, was there on a separate occasion.

Q What was the occasion for Albert's visit, if you know?

A He was further checking the financial records of the company. At the February 4 meeting we still didn't have a completed statement of our 1969 records, financial records.

THE COURT: As of December 31, you didn't have that yet?

THE WITNESS: That is correct. And Mr. Hourihan was working on these things.

MR. MALONEY: I would object. There is no testimony that Mr. Kovar was in Barbados when Mr. Albert was there. He seems to be testifying not from personal knowledge.

THE COURT: I think it is a little confusing as to the particular visits.

You weren't there the previous time when Mr.

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Albert was down there? You were in New York?

THE WITNESS: The first time he came down to Barbados I was in New York.

THE COURT: Now, around the time of the closing, when did you get back to Barbados?

THE WITNESS: I was sort of like a yo-yo. I was traveling back and forth constantly, and the second time that Mr. Albert was there was in January.

THE COURT: Were you there then?

THE WITNESS: Yes, sir.

THE COURT: You were there when he was there?

THE WITNESS: Yes, sir.

Q What was the occasion for Mr. Albert's second trip in January?

A Well, the second trip I had advised Mr. Albert that we had a buyer for the house in which I was living.

When we set up the company in Barbados, one of the things we did was to buy a home, and that is where I was living. When I say "we," the corporation. I called Mr. Albert and advised him that we had a buyer for the property, an offer of $80,000. This had been indicated to Mr. Albert when I was in New York actually initially. And mid-January Mr. Albert called me and said that he did not want me to sell the property, that Plessey wanted to keep it and was

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thinking in terms of having a place in Barbados that company officials as well as customers could stay, and therefore they wanted it and would pay the same price. I agreed to that.

So he came down in January to work out with local counsel the papers necessary to have that take place subsequently, and then spent the rest of the time working with Mr. Hourihan on the books.

MR. McCONNELL: That brings us to the March 2 closing.

Would this be a good place to break?

THE COURT: Yes. I will excuse you until 10 o'clock tomorrow morning. Please remember not to discuss the case with anyone in the meantime. Thank you very much. I hope you have a nice evening.

(An adjournment was taken to March 8, 1974, at 10 o'clock a.m.)

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SCIENTIFIC HOLDING COMPANY, LTD.
v.
PLESSEY INCORPORATED

March 8, 1974,
10 A.M.

--

(Jury in box.)

THE COURT: Nice to see you this morning, and thank you very much for your promptness.

Mr. Maloney, is there something you want to say?

MR. MALONEY: Your Honor, this is Mr. David Gretten, who is our manufacturing representative in charge of the Barbados plant during a period of the measuring year, and still an employee of Plessey.

E D W A R D A. K O V A R, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. McCONNELL:

Q Mr. Kovar, I show you what has been marked Plaintiff's Exhibit 101 and ask you can you identify that for the record.

A Yes, this is a sales brochure describing the facilities of International Scientific Limited which I prepared, I believe, in the early part of 1969.

MR. McCONNELL: I offer 101 in evidence.

MR. MALONEY: No objection.

(Plaintiff's Exhibit 101 received in evidence.)

xx

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MR. McCONNELL: I also offer in evidence at this time, your Honor, Plaintiff's Exhibit 109, which is a report on the proposed acquisition of International Scientific Limited prepared by Mr. Sinsheimer and given to the main board of directors of English Plessey.

MR. MALONEY: Did you say 109? Or is it 104?

MR. McCONNELL: 109.

THE COURT: Any objection?

MR. MALONEY: No objection.

THE COURT: Plaintiff's Exhibit 109 will be received in evidence.

xx (Plaintiff's Exhibit 109 received in evidence.)

MR. McCONNELL: I also offer in evidence at this time Plaintiff's Exhibit 11, which is a report under date of Febryary 25, 1970, prepared by Mr. Crocker, of English Plessey. Memory Components Division with reference to International Scientific Limited.

THE COURT: Any objection to that?

MR. MALONEY: No objection, your Honor.

xx (Plaintiff's Exhibit 111 received in evidence.)

MR. McCONNELL: I also offer in evidence at this time Plaintiff's Exhibit 110, which is an excerpt of the minutes of a meeting of the board of directors of English Plessey under date of February 27th with reference

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to the acquisition.

MR. MALONEY: No objection.

xx (Plaintiff's Exhibit 110 received in evidence.)

BY MR. McCONNELL:

Q Mr. Kovar, I believe you testified earlier that in one of the negotiating sessions you asked for an employment contract on your behalf, and that Mr. Albert said he didn't think that would be possible. But as I recall your testimony, there was no final resolution at that particular point. Now, did you get an employment contract?

A No, sir, I did not.

MR. McCONNELL: With the Court's permission before going to the events occurring at the closing on March 2nd and 3rd, I would like to read portions of the exhibits that I have just introduced in evidence, Plaintiff's Exhibits 109, 111, and 110.

Plaintiff's Exhibit 109 is a report from Mr. Sinsheimer to the main board of directors of English Plessey.

THE COURT: I would say that if Mr. Maloney wants to read any other portions of these exhibits, you can go ahead and do so.

MR. McCONNELL: I think to obviate that I will read at least in the instance of this exhibit the entire

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report. It is not that long. The date of the report is January 7, 1970.

THE COURT: You will notice, ladies and gentlemen, as some of you probably know, the English do this a little differently than we do, and where we put the date January 7, 1970, the English do it 1.7.70. So if you notice that on these exhibits, that is purely a difference between ourselves and our English cousins.

(Mr. McConnell reads from Plaintiff's Exhibit 109 to the jury.)

MR. McCONNELL: Next I would like to read a portion of the Crocker February 25th report, February 25, 1970.

THE COURT: What exhibit number is that?

MR. McCONNELL: That is number 111, your Honor.

(Mr. McConnell reads from Plaintiff's Exhibit 111 to the jury.)

MR. McCONNELL: I have just one more exhibit to read.

THE COURT: Which one is that?

MR. McCONNELL: 110. This is the excerpt of the minutes of the board of directors of English Plessey, and the date of this is February 27, 1970.

(Mr. McConnell reads from Plaintiff's Exhibit 110

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to the jury.)

MR. MALONEY: In connection with the reading of that exhibit I think Mr. McConnell should inform the jury that it also indicates that Mr. Sinsheimer was not present at that board meeting.

MR. McCONNELL: It indicates that Mr. Sinsheimer was not present. It indicates that the action to be taken on these matters was to be by Mr. W.J. Sinsheimer.

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DIRECT EXAMINATION CONTINUED

BY MR. MC CONNELL:

Q Turning now to the March 2 closing, where did that occur, Mr. Kovar?

A In Barbados.

Q Over how long a period did the closing take place?

A A day and a half.

Q Can you fix the date?

A Yes, March 2 and then part of March 3.

Q Who was present for ISL?

A Myself and Mr. Lewis.

Q Mr. Lewis, again, is your attorney from Chicago?

A That is correct.

Q He was Mr. Shapiro's partner; is that right?

A Yes, sir.

Q Who was present for Plessey?

A Mr. Milton Albert and Mr. Dubin.

Q What, if anything, was said by Mr. Albert at the closing with reference to amending or changing the purchase agreement?

A Mr. Albert advised us at the outset of the meeting on March 2 that there were going to have to be changes made in the agreement before the closing.

I asked him what he had in mind.

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He said that his review of our financial records indicated to him that we were going to need $800,000 additinal funds rather than $600,000 and that he felt it was only fair that we agree to pay interest on the additional $200,000.

The original agreement had called for an infusion of capital of at least $600,000, interest free, to ISL in the sense that whatever cost the money was would not be charged against our earnout and against the profits to be reported by ISL.

He said that the additional $200,000 that he felt was necessary would have to bear interest at ten percent and that we would have to charge that against our earnout formula.

Q Did he say why, in his opinion, 800,000 was now required rather than 600,000?

A He said that on the basis of his review of our records that we were going to need the additional 200,000 and that the reports, which Hourihan had given him, confirmed that the additional 200,000 was necessary.

Q How was that resolved?

A Well, I indicated that I did not believe 200,000 was necessary; that I had indicated earlier that I thought 600,000 would suffice and that it appeared to me that what

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he was doing with the additional 200,000 was proposing to pay off all of our suppliers currently, whereas my original proposal with the 600,000 had assumed that we would only pay up to a thirty-day status in which we would still -- we would have paid all our creditors, all our suppliers, but those who were owed for less than thirty days would not be paid off. The normal billing be net thirty days.

I indicated to him that I thought as a business judgment the additional 200,000 was probably a good thing. We had long been in a difficult situation of very slow pay to our suppliers and I agreed with him that I thought it was a good judgment matter to pay them all up to date to restore their confidence in our ability to be a good customer of theirs, but I said that I didn't think that was necessary and I certainly didn't think it was necessary to the point of charging us the ten percent interest for that additional money.

Q What, if anything, did Albert say in response to that?

A His response was consistent in that he said he felt it was necessary; that it was his obligation to determine how best to finance the operation and in his judgment the additional 200,000 was necessary and

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in his judgment the only fair thing to do was to charge us for that additional money.

When I questioned whether I had the authority to do that, Mr. Dubin said, well, that was my problem to work out and Albert strictly maintained a consistent position saying it was necessary and it was going to have to be a conditinn of the closing.

Q Did you then agree to be charged with the cost of this additional 200,000?

A Yes, sir; I did.

Q At ten percent or 20,000?

A Correct.

Q Now, was there some further change in the purchase agreement?

A Yes. When that matter was resolved, Mr. Albert said there was one other point that he wanted Mr. Dubin to explain and Mr. Dubin said that they wanted to reduce the period of time in which we had to reach minimum earnings. The contract, as I understood it, that we had signed on February 4 provided for ISL, the present management of ISL, to reach an average of $15,000 per month in the months of June and July; June being the third month, commencing with the third month we were supposed to start averaging $15,000 a month.

Mr. Dubin wanted that period reduced to start

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in May rather than in June.

I asked him why as to that and he stated that they had not really considered the fact that the March 2 signing, closing, would give us an additional month because the measuring year started the first full month after the closing and the effect of a March 2 date would make the measuring year start April 1 and, in effect, would give us a free month of March to start to fill up the pipeline of material and get things moving again.

Q In fact, was the March 2 closing date written into the February 4 contract?

A Yes, sir.

Q What did you say as to that?

A I told him I didn't think it was a justifiable reason; that they very well knew that March 2 was the closing; it had been in the February 4 agreement and I considered it to be an insufficient reason to make the change.

I said I thought they knew they had us over the barrel and I felt they were trying to stick it to us.

Q What did Dubin say to that?

A Dubin said if that was my attitude maybe they ought to close off the whole thing right then and there because if I was going to have this feeling they were

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unfair advantage, they didn't want that kind of relationship, so maybe they had better just close the whole thing out and not go through with it.

Q You testified earlier that in connection with the proposed acquisition by Data 100 back in September to secure a loan of $200,000, that you and Johnson and Van Bellingham had pledged your stock in the company.

A That is correct.

Q What had happened with that stock?

A Well, Data 100 had advised us that it wanted the $200,000 paid back and that our failure to do so would result in their excercising their right to take over our stock. That initial notice was sent to us in November, as I recall, of 1969. It called for a payment back of the 200,000 by February.

It was my understanding that we had sought and received an extension on that February demand on the basis that we were closing a deal with Plessey. So, at the time of March 2 I was under the gun of getting the 200,000 to pay that back in order to protect our stock.

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Q But as part of the acquisition by Plessey -- well, how had the loan been worked out with Data 100? Let's get that.

A After the signing of a preliminary agreement with Data 100, part of that preliminary agreement had called for them to guarantee us a loan from City Bank here in New York of $200,000.

Q So, the loan has actually been made by the City Bank?

A That is correct.

Q As I understand it, Data 100 had guaranteed that loan?

A Yes, sir.

Q Under the purchase agreement with Plessey, what, if anything, was Plessey going to do with respect to the loan at the City Bank?

A The first part of the 600,000, the first 200,000 of it was earmarked for repayment of that loan.

Q And so that would have taken Data 100 off the guarantee, is that right?

A That is right.

Q That would have freed your stock?

A Yes, sir.

Q But if they didn't do that, if they didn't pay off the loan at the City Bank, what would happen with your stock?

THE COURT: Wait a minute. Aren't we getting

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into conjecture here? The fact is it was paid, wasn't it?

MR. MALONEY: We have no objection, your Honor, because we intend to pursue this as well.

THE COURT: All right, go ahead then.

MR. MC CONNELL: I don't know what ultimate action Data 100 might have taken, but I think what we ought to get is what they indicated they were going to do.

THE COURT: I suppose you knew if the loan wasn't paid that the collateral, which was the stock, would be taken over either by the bank or Data 100; is that right?

THE WITNESS: Data 100 had advised us that they were going to exercise that means.

Q Now, had you not closed on March 2, could you have continued to operate the business?

A It was my opinion that we were against the wall and that we could not.

THE COURT: Would you tell us what you mean by that? What was the situation of your company on March 2?

THE WITNESS: Well, during the month of February, your Honor, we had received the additional approximately $80,000 from Plessey for the purchase of the house that I was living in.

THE COURT: Right.

THE WITNESS: And it was anticipated and worked

out that that money would be just sufficient to keep us open through the month of February and, therefore, unless we have the additional monies coming in as of the closing, we were going to have insufficient capital to stay open.

Q In your discussions, did Albert state when he had discovered that an additional $200,000 was going to be necessary?

A He didn't say any exact date. He did say that the reports that Mr. Hourihan had given him that morning confirmed his original conclusion.

Q I show you what has been marked Plaintiff's Exhibit 5, which is dated March 2, 1970, and ask you if you can state what that is?

A Yes. This is a letter of understanding that was typed that day on March 2 by my secretary pursuant to the dictation of Mr. Dubin and then signed by Mr. Albert in behalf of Plessey and myself on behalf of International Scientific as an amendment of the February 4 agreement.

MR. MC CONNELL: I offer Plaintiff's Exhibit 5 in Evidence.

MR. MALONEY: No objection,your HOnor.

THE COURT: It will be received.

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[Plaintiff's Exhibit 5 received in Evidence.]

Q Was that signed by you on behalf of International Scientific Limited?

A Yes, it was.

Q And by Plessey, Incorporated by Mr. Albert?

A Yes

Q Did that purport to record the two amendments that you just testified to?

A Yes.

Q The additional money and the shortening of the period?

A Correct.

Q Now, referring to Paragraph 2 of that agreement and the language which reads as follows:

"The modification agreement, dated February 18, 1970, with reference to the right by Plessey to assume full management responsibility on the occurrence of certain events is hereby further modified so that if profits of ISL commencing May 1, 1970 (crediting to the month of May the net profits of the two-month period comprised of March and April but not charging any net loss for that period) average less than 15,000 per month, or if there has been three consecutive months of losses during that measuring year (excluding

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the first two months thereof) shall no longer apply and Plessey shall have the right to assume full management responsibility. In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in good faith."

Now, what is your understanding as to the period of time that you had to make average profits of 15,000 under that amendment, Plaintiff's Exhibit 5?

A The period of time was moved up so it would have been May and June of 1970 that we had to reach the 15,000 average.

THE COURT: What you are saying is it was your understanding that "average" means two months?

THE WITNESS: Yes, sir.

THE COURT: That's really what the whole point is?

THE WITNESS: Yes, sir.

Q Before the agreement had read this "average commencing in June" and now it read "average commencing in May", isn't that right?

MR. MALONEY: Objection, your Honor. There has been no document introduced in evidence to my recollection that says, "commencing in June."

MR. MC CONNELL: It says commencing with the third month of the measuring year, which everybody concedes

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is June.

MR. MALONEY: All right, but I don't think we should refer to that as being in a document because it is an interpretation of a document.

THE COURT: That is fair enough. I agree with that.

This was the change, whether it was in the document or not, you agree this was, in effect, the change that was made?

MR. MC CONNELL: It moved back or up, however you want to state it, like thirty days.

THE COURT: All right.

Q Now, does that exhaust your recollection of the conversations?

THE COURT: Wait a minute. I don't know that that is a question. You have been asking questions. If you want to ask him does he recall anything further about the closing, you can do that.

Q Do you recall anything further about the closing?

A Yes, sir.

Q All right, what is that?

A The question was raised by me concerning the payment that was to take place in U. S. dollars.

THE COURT: Payment of what now? Of the 800,000?

THE WITNESS: Of the $180,000 down payment.

THE COURT: Oh, the down payment, all right.

THE WITNESS: Plus the eventual payout at the end of the measuring year that was called for in U. S. dollars at that point.

Barbados, which is part of the British Commonwealth and part of the Sterling area, as distinguished from the U. S. Dollar area, had laws indicating Governmental approval necessary to take money out of the Sterling area, just, as I understand it, England did, and I wanted an understanding amongst the parties that the dollars being paid by Plessey U. S. would be dollars paid in New York so that we wouldn't have any problem of bringing them into Barbados and then requiring Governmental approval to bring them out.

Mr. Albert indicated that he thought that the dollars should be registered in Barbados and that it was our problem to get them out.

We had some discussion on that matter and it was left that the contract provided it would be paid in U. S. dollars and there was no specific agreement as to what the location was of that payment.

Q Do you recall anything further?

A I do recall during the argument as to the

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amendments that Mr. Albert said he was going to have to call New York and stop the payment of the $200,000, repayment of the Data 100 loan; that he had indicated to the bank before he left New York that he was going to go ahead that day and both Mr. Dubin and Mr. Albert left my offices ostensibly to make connection with City Bank.

Also, at one time or another during that conversation --

MR. MALONEY: I would have one objection at this time, your Honor. We seem to be losing all sense of time sequence with these various events. I can't understand when these very events happened in relation to one another. I mean he is going to be very confusing unless we fix some sequence here.

THE COURT: I know, I think it is probably a little difficult.

Where did this closing take place in Barbados? Was this at the office of the company?

THE WITNESS: Yes, all of this conversation that I have referred to thus far took place on the morning of March 2 in my office.

THE COURT: When did these problems, these proposed amendments, when were they discussed? Was that

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the first day?

THE WITNESS: Yes, sir.

THE COURT: When on the first day?

THE WITNESS: The opening of the conversation.

THE COURT: Right out of the box, that was the first thing and that would be the morning of the 2nd?

THE WITNESS: Yes, sir.

THE COURT: When was it that you say that there seemed to be this disagreement as to whether these conditions would be met and they said they had to advise the City Bank, when did that happen?

THE WITNESS: This was still in the morning.

THE COURT: That was still in the morning on the first day?

THE WITNESS: Yes, sir.

THE COURT: Incidentally, does the City Bank have a bank in Bridgetown?

THE WITNESS: Yes, your Honor, it does.

THE COURT: But they weren't doing it there, they said they would have to contact New York?

THE WITNESS: They had made their arrangement with City Bank in New YOrk for the funds to ultimately be transferred down there.

THE COURT: All right.

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I am confused. As I understand it, the 200,000 was to go to Data 100, isn't that right?

THE WITNESS: Actually, it was to go to City Bank in New York. Data 100 also had worked with City Bank.

THE COURT: I know, but that 200,000 wasn't coming down to Barbados?

THE WITNESS: That 200,000 had already come to Barbados from City Bank on the Data 100 guarantee and what Plessey was doing was arranging for City Bank to be paid back and in assuming that 200,000 loan.

That 200,000 was a loan directly to ISL, but it had been guaranteed by Data 100.

THE COURT: Right.

Q Do you recall anything further so far of the events at the closing?

A Well, during the morning discussion Mr. Lewis and I also left the office on several occasions to discuss the amendments and prior to my agreeing to them and during that morning, early in the morning, Mr. Hourihan brought up the final financial reports, which is about the time that Mr. Albert said that he has confirmed his conclusions as to the additional 200,000 being required.

The agreement was a letter agreement of amendment

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and was finally concluded still that morning.

Q Now, after the closing, were the creditors and the outstanding accounts payable paid off and was the infusion of capital contemplated put into the business?

A Yes.

Q I show you what has been marked Plaintiff's Exhibit 14 and ask you if you can state what that is?

A Yes. This is a monthly statement prepared by me to the directors of the old ISL, now the new Scientific Holding Company, showing the results for March 1970.

Q What does that show for the March results, first on the Plessey accounting basis, and, second --

THE COURT: Are you offering this statement?

MR. MC CONNELL: I am sorry. I offer it in Evidence, your Honor.

THE COURT: Have you any objection to this?

MR. MALONEY: No objection, your Honor.

THE COURT: All right, Exhibit 14 will be received.

*** [Plaintiff's Exhibit 14 received in Evidence.]

Q What does Plaintiff's Exhibit 14 show was the

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operating result for March on Plessey's accounting basis and on ISL's accounting basis?

A On Plessey's accounting basis it showed a loss of approximately $35,000.

On the ISL accounting basis it showed a loss of approximately $18,800, the difference being expenses which were not attributable to ISL under the current earn-out formula under the purchase agreement.

THE COURT: The current what formula?

THE WITNESS: The current earn-out formula.

Q Would you explain that?

A Yes. As I noted before, the $600,000 infusion, the cost of that money was not to be charged against our earn-out formula, but, nevertheless, was a loan on the company's on which interest had to be paid and so that interest, which actually had to be paid and was an expense of the company, had to show as an expense, and, therefore, added to the loss of the company for that month, but it was not to be charged against the former owners under its contract earn-out.

There were also expenses of Plessey personnel traveling in coming to Barbados and that kind of expense was not to be charged against the earn-out formula.

A number of things of that sort, administrative

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expenses of Plessey, which the company ultimately -- the new company ultimately would have to pay and, therefore, were properly recorded as expenses of it, but, nevertheless, were not to be charged against the former owners.

The difference was approximately $17,000 in this particular month.

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Q I show you what has been marked Plaintiff's Exhibit 17 and ask you if you can state what that is.

A Yes, sir. This is my report for the month of April to the directors of the old company.

MR. McCONNELL: I offer Plaintiff's Exhibit 17, your Honor.

MR. MALONEY: We have no objection, your Honor.

THE COURT: Received.

xx (Plaintiff's Exhibit 17 received in evidence.)

Q April was the first month of the measuring year?

A Yes, sir.

Q What were the April results on Plessey's accounting basis and on ISL's accounting basis?

A On Plessey's accounting basis it showed a loss of 18,000, whereas on the ISL accounting basis it showed a loss of 10,800.

Q Do you recall a Spring Joint Computer Conference meeting?

A Yes, sir.

Q Where did that take place?

A In Atlantic City.

Q What was the nature of the meeting?

A There were annually two meetings, a so-called

Spring Joint Conference a Fall Joint Conference, which was a gathering of computer and peripheral computer makers, engineers, for communication on certain papers and for the companies to have a display of products and for sales.

Q Were you at that meeting?

A Yes, sir.

Q Who from Plessey was at that meeting?

A Mr. Crocker.

Q Who is he again?

A He was the head of parent Plessey Electronics Division, which included memory products. He had a staff of engineers from England, which included a Mr. Jones, amongst others.

THE COURT: When was this held? This conference?

THE WITNESS: This would have been in May.

THE COURT: May, 1970?

THE WITNESS: Yes, sir.

Q Was Mr. Clark present at that conference?

A Mr. Clark was present.

Q How about Mr. Parr?

A Mr. Parr came to the conference, I think, the second day.

Q Again, who were those people? Mr. Clark and Mr.

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Parr?

A Mr. Clark was president of Plessey Electronics, a subdivision of Plessey United States, and Mr. Clark had been made by Mr. Sinsheimer to be responsible administratively to the ISL operation. I was supposed to report to him.

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Q I think there may be some confusion. You say Parr or Clark was the one you were to report to?

A I meant to say Clark.

Q Did you explain who Parr was?

A Mr. Parr was introduced to me at that meeting as a newly hired marketing director for the United States memory operation.

Q Where did you go after the convention?

A Mr. Crocker, Mr. Clark and myself returned to Barbados together.

Q Now, either at the convention or on the plane down to Barbados, or after you got to Barbados, did you have discussions with those gentlemen concerning the management of ISL?

A Yes, sir.

Q Would you relate as best you can and try to give us the place where each conversation took place and what was said on that subject?

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A Plessey had a display for the public and had had a paper read concerning plated wire memory, which was a new concept of a type of memory. This display was located in one of the hotels on the boardwalk. We, ISL, had been asked to bring up some of our material so we could also have a display. It was in that hotel suite when Mr. Parr came in and was introduced to me as having been newly hired by Mr. Clark that I discussed briefly with Mr. Parr our marketing setup and he discussed with me what he had been advised was going to be his area of responsibility and how he envisaged the marketing setup upon his employment.

Q What did he say on that subject?

A He indicated that it was his understanding, that he had been advised that he was going to have control over marketing, and marketing was going to be located in the Boston area, where he was going to move, and sales would take place out of that Boston facility, and that ISL would merely transfer on paper or sell to Boston, and Boston would then become the marketing and sales agent for ISL memory products.

I told him that wasn't the way it could work during the measuring year and that I thought Plessey misunderstood the advantages that we had under the present sales

method, not only of fairly low cost of marketing, but also of having a tax free transaction, and that by setting up the Boston sales organization and having sales come out of Boston it would necessarily subject the entire sales to United States income tax, which would obviously affect earnings and would also increase our marketing costs.

He said he didn't understand any of that, that we would have to get back to talk to Clark and Crocker.

Q Were there some further conversations with either Clark or Crocker concerning the management of ISL or how this facility was to be run?

A Yes. That evening the four of us, Crocker, Clark, Parr and myself went out to dinner together.

THE COURT: This is in Atlantic City?

THE WITNESS: Yes, sir.

MR. McCONNELL: Incidentally, your Honor, it's a minor thing, but I think I said Atlanta in the opening statement; it is Atlantic City.

THE COURT: The jury and I won't worry about that now; we know it is Atlantic City.

THE WITNESS: During the dinner I was asked to explain our method of pricing to Mr. Parr, and this had already been explained to both Mr. Clark and to Mr. Crocker, and they asked that I go over it again for Mr. Parr's

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sake, which I did.

Toward the end of dinner, and then when on our way back to the hotel and at the hotel we were discussing locations and functionings of a United States operation. Clark and Crock indicated that the United States operation should be in the Boston area. I indicated that I thought initially during the measuring year it should be left in Farmingdale, where Plessey Electronics was located.

THE COURT: Farmingdale what?

THE WITNESS: Long Island.

THE COURT: We are getting closer to home.

THE WITNESS: I indicated that purchasing had already been set up there for our operation, it was close to JFK Airport, and the facility was already there, and it would be the cheapest and most efficient way of starting up a United States facility.

I said that I thought in the long run that Coral Gables, Florida, would be a preferred spot for a United States sales facility because of its proximity to the Miami International Airport, which was just 15 minutes away, that there were many freight flights, as well as direct flights, to Barbados, and that Miami had good contact with all the rest of the United States.

I said, "Last, but not least, if you are going

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to hire additional engineers, you will find them much more amenable to live in Florida than in Boston."

And, as I say, that conversation started at dinner, kept on during the trip back to the hotel, and continued at the hotel.

At the hotel some of the English engineers got involved in the conversation, and Mr. Crocker finally closed the conversation out rather abruptly by saying that the Boston area had been approved by the board of directors, that they had had a hard time getting the program sold to them in the first place, and he certainly was not going to go back and ask for any changes, and there certainly was no sense in discussing it any further. That brought the conversation to a close that evening.

Q Was there some further conversation on the plane down to Barbados and after you got there?

A Yes. On the plane going back to Barbados the following day Mr. Clark and I got together. He indicated that he wanted several changes to be made.

First, he wanted Mr. Parr to have complete control of marketing starting immediately, which control would include the right to set prices on all new orders. He wanted our chief engineer, Mr. Keppel, to report to a Mr. McNamara, whom he had already hired in the United

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States.

To back-track a bit, when we signed the initial agreement with Plessey, Plessey had already hired a Mr. Kinkhof, who was hired as head of United States Plessey, Plessey memory operations, and a Mr. McNamara, who was hired as their chief memory engineer.

So Mr. Clark said he wanted Mr. Keppel to report to Mr. McNamara, who was staying on. Mr. Kinkhof had been already terminated by Plessey prior to Mr. Parr's being hired. He wanted a change of our production facility to coincide with the type of operation, the type of layout that they had in Lisbon and in Malta.

To explain that, we had a bench system of assembly. Employees were seated along the bench doing the assembly and inspection work. Plessey used an individual desk system, where each employee had his own work station, in effect, rather than being located at a bench. They liked that system; they were familiar with it; and they said they wanted to do the same thing in Barbados.

They wanted the prototype work --

Q Prototype meaning what?

A Well, in most cases when we were talking with new customers, they would ask for us, they would give us an order for one or two units, which we would build as a

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prototype of the product that they wanted. It was a one of a kind of building. And they would then check out the quality of the work, the workmanship, to see whether it met their standards before giving us a production order.

Mr. Clark's thought was that that prototype operation should be located in the States and that personnel should be hired in the States to perform that function. He wanted, in effect, the engineering to be moved to the States, but that was not an immediate matter, leave it in Barbados for the time being, but that was eventually part of the matrix plan. He explained it.

I indicated to him that I could not agree to turn over pricing and the marketing responsibility to someone else, and that as to having Mr. Keppel report to Mr. McNamara, I said McNamara was a plated wire memory engineer, he had no background in core memories, and I thought that was a mistake and I would not agree to that.

As to the layout of the plant, I indicated that we had hired personnel from a number of different memory companies in the United States. It had been their experience in these various different companies, including Control Data, Ferroxcube, and several others, that the bench system had been used and was being used, and that while the desk system might even be better, it would

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obviously cost money to make the changeover and it obviously would affect production while the changeover was being completed. And so I said I didn't think that should be done during the measuring year.

The plane stopped in Antigua, and Mr. Crocker took me aside and said that I should back off, that Mr. Clark was starting to get angry with me, and that I should try to think this thing through to see whether I could not agree with the suggestions that were being made.

And I told him that I didn't see how I possibly could, having the responsibility and the right to maximize profits during the earn-out year.

The conversation did not continue from Antigua to Barbados, a relatively short trip, but did resume the following morning in my office. The intention of the meeting for Clark and Crocker to come into Barbados was to have a two or three-day meeting with all the engineer personnel and for them to become familiarized with our methods and our people.

But the following morning, when they met in my office, Mr. Clark asked me whether I had changed my mind on the matters that we had discussed the night before, and I told him I had not. He said he thought there was a conflict of interest between us, that he was trying

to do the best thing for the company, and that by my taking the position that itwas not the best thing for the old, prior owner, that a conflict of interest was developing. And I told him that I did not think that was the case, that I was taking the position nothing should be done to injure the company, and that in the long run it seemed to me if we were making money it was to their benefit as well.

The meeting came to a very quick end, and Mr. Clark said, well, if that was going to continue to be my position they would have to go back and talk to Mr. Sinsheimer. I suggested if they wanted to make these changes now, that I would be willing to do so if they agreed to pay the full pay-out, and that I was sure then, as I am now, that our shareholders and investors would have been pleased to receive their money immediately, and that if Plessey felt strongly enough that these changes were going to be to their long term advantage, that I would then be more than willing to make them. And, as I say, Clark indicated he would have to get back and talk to Mr. Sinsheimer. The meeting was terminated.

They asked for Mr. Peter Hewitt and Mr. Jones, the English engineer who was down there to meet with them that afternoon at the hotel where they were staying, and

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they then left the following morning without any further meeting with our personnel.

THE COURT: This might be a good time to take our morning recess.

(Recess.)

BY MR. McCONNELL:

Q Mr. Kovar, after this May meeting with Mr. Clark, Mr. Crocker, the conversations of which you have just related, did you make some report to ISL, now SHC, directors?

A Yes, I did.

Q Was that report attached to your May 13th report, which is in evidence as Plaintiff's Exhibit 17?

A Yes, my handwritten notes.

Q Do you have Plaintiff's Exhibit 17 in front of you?

A Yes, I do.

Q Will you read to the court and jury your report of the events?

THE COURT: Is it in evidence?

MR. McCONNELL: Yes.

A Yes.

"Plessey has asked for complete control of our marketing activities including the right to set prices. I

have advised them I could not agree unless they now agree to pay the full pay-out at the end of the 12 months regardless of how well ISL does. They also asked for greater control of operations, e.g.,they want to completely revise the production layout, benches, etc. I have answered that the expense of any such change cannot be charged against pay-out formula. Their 'asking' for the two alternates was more in the form of a corporate directive. My response was in the form of being unable to accede to the direction. I have been advised that they are reviewing the situation and will respond shortly. This all took place in the last three days. Any written reference to this matter shall be marked 'confidential' to my attention, please, as I do not want this situation to be known."

And my initials "AK."

MR. McCONNELL: Your Honor, I offer in evidence at this time Plaintiff's Exhibit 20, which is a memorandum prepared by Mr. Clark under date of May 25, 1970, reporting on events and meetings occurring on May 20th and May 22nd in England.

THE COURT: Any objection?

MR. MALONEY: No, your Honor.

THE COURT: Received.

(Plaintiff's Exhibit 20 received in evidence.)

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MR. McCONNELL: At this time, your Honor, I ask permission to read the exhibit to the jury.

THE COURT: All right.

(Mr. McConnell read from Plaintiff's Exhibit 20 to the jury.)

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Q Did you have occasion to go to New York and did you on such occasion meet with Mr. Clark and Mr. Albert in early June?

A Yes, I did.

Q Can you fix the date?

A It was on June 11, 1970.

Q Now, let me back-track a moment. The report I just read to the jury was dated May 25, 1970. At that time, Mr. Kovar, were the May operating results known?

A No, sir.

Q When did they first become available?

A I believe it was June 5th.

Q There was no report of sales activity in June at that time, either?

A That is correct.

Q Who was present at this meeting on the 11th in New York?

A Mr. Albert, Mr. Clark and myself.

Q What was said and by whom?

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A I had been expecting to meet with Mr. Sinsheimer. I had talked to Mr. Clark several times during the month of May after our meeting, asking him what decision had been reached, and Mr. Clark --

THE COURT: Where was Mr. Clark at this time?

THE WITNESS: In New York.

THE COURT: You were telephoning him in New York?

THE WITNESS: Yes, sir.

Q The decision reached as to what?

A Well, when the May meeting of Mr. Clark, Mr. Crocker and myself broke up it was on the basis that they were going back to talk to Mr. Sinsheimer to determine what was to be done with the situation and that they were going to advise me as to what the decision of Plessey would be. So I called Mr. Clark on two occasions, I believe, asking him if the decision had been reached. On both occasions he indicated that they had not had a chance to get the matter resolved yet.

Then somewhere around the 5th or 6th of June, I believe, I came up to the States, and a day or two later Mr. Clark called me and stated that Mr. Sinsheimer wanted to see me on the 11th in New York, and so I flew to New York. I was in Chicago, and I flew to New York on the 11th to meet with Mr. Sinsheimer, and in his stead Mr. Albert

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and Mr. Clark were present. I walked into Mr. Sinsheimer's office where the meeting took place and Mr. Clark handed me a letter.

Q I show you what has been marked Plaintiff's Exhibit 26, which purports to be a copy of a letter from Mr. Sinsheimer to International Scientific Limited, attention Mr. A. Kovar, under date of June 9, 1970. I ask you if you can identify that as the letter?

A Yes, it is.

MR. MC CONNELL: Your Honor, I offer Plaintiff's Exhibit 26 in Evidence, but without admission as to the assertions contained therein.

THE COURT: Any objection to receive the letter in Evidence?

MR. MALONEY: No, sir.

THE COURT: It may be received.

[Plaintiff's Exhibit 26 received in Evidence.]

MR. MC CONNELL: If I may, let me interrupt the examination at this point to read the letter from Mr. Sinsheimer to Mr. Kovar or to International Scientific LImited, Attention Kovar.

[Mr. McConnell read Plaintiff's Exhibit 26 in Evidence to the Jury.]

Q When that letter was handed to you, Mr. Kovar, what did you say, if anything?

THE COURT: You didn't finish up the letter.

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I think you should do that. Who signed the letter?

MR. MC CONNELL: "Very truly yours, Plessey, Inc., by Warren J. Sinsheimer."

THE COURT: All right.

MR. MC CONNELL: It shows copies going to the directors of ISL.

A After reading the letter I asked what it meant to me personally and Mr. Clark advised me that I was being terminated immediately.

I asked him what the company intended to do, what their plans were as far as severance pay or the like for me.

He said that they thought that the fair thing to do would be that they would continue to pay me for six months so that I could have time to move back to the States and look for a job.

I asked them if they wanted me to spend a certain amount of time with the company and with them in effecting a transition.

And they said, no, that they would like me to go down to Barbados immediately and clear out my office; that they had a team that was coming in that Saturday. This was on a Thursday.

I told them that my older daughter was being

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graduated from high school the following day and that my youngest son had pneumonia and I didn't think I could leave that quickly.

They said, well, the team would go down anyway. They would lock my office and no one would go into it and I would be assured that all my personal papers would not be touched; that as soon as I could get there, they would appreciate my going in and clearing out my personal effects.

I asked them why they felt that this was necessary to do.

They said that under the circumstances it was becoming apparent that a conflict of interest was arising.

Both Mr. Albert and Mr. Clark said that they were not questioning my abilities and that they would be quite willing to give me letters of recommendation, but Mr. Clark repeated what he had told me down in Barbados that conflict was arising and that they wanted the relationship to be an amicable one and, therefore, thought it better to sever it at that point before the conflict grew and animosities might develop.

They then asked me if I would like to go out to lunch with them and I said no and left.

Q Do you recall what the May results were?

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A Yes, we had a profit of between $6 and $7,000.

Q Do you recall what the sales were for May?

A The new sales were approximately $131,000 and return sales added on so the gross sales were about 141 to about 142,000.

Q Do you recall what you were projecting for your June sales?

A Yes, both Mr. Hewitt and I were projecting approximately 210,000.

Q On projected sales of 210,000 for June, do you have an opinion as to what profit you would have earned?

MR. MALONEY: Objection, your Honor. I don't think it is a matter of opinion.

MR. MC CONNELL: Your Honor, I think that this man is entitled to give his opinion.

THE COURT: Let's put it another way. What were your sales in May?

MR. MC CONNELL: $143,000, your HOnor.

THE COURT: I have 131,000. What were the sales?

THE WITNESS: The new sales, I think were 131 to 132,000, but under the accounting system they also recorded the return sales so the total was 142 to 143,000.

THE COURT: What do you mean by return sales?

THE WITNESS: Well, prior to the Plessey purchase, Mr. Albert had suggested to Mr. Hourihan, our financial man, that Plessey deducted from sales any returns of product during the month and added to sales any repaired products that had been returned and then sent back to the customer. We had not done that in the past, but we accepted his suggestion and from that point on followed this three-step method of computing final sales for the month.

On that Plessey method the sales for the month of May were somewhere between 142 and 143,000, to my recollection.

THE COURT: Are you offering this Exhibit 16?

MR. MC CONNELL: This is 22, your Honor. I am going to.

Q I show you what has been marked Plaintiff's Exhibit 22 and ask you if you can identify that?

A Yes, this would have been the report showing the May results as compared to April results.

MR. MC CONNELL: I offer Plaintiff's Exhibit 22 in Evidence, your Honor.

MR. MALONEY: Your Honor, I would have no objection of the piece of paper without admitting the accuracy of the figures on it.

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THE COURT: That's all right. It was prepared by you or under your supervision, is that correct?

THE WITNESS: Actually this statement was prepared by Mr. Hourihan. I was in the States at the time.

THE COURT: All right. Mr. Hourihan being Plessey's controller?

THE WITNESS: Controller, yes.

THE COURT: All right, I will receive it.

[Plaintiff's Exhibit 22 received in Evidence.]

MR. MALONEY: Did the witness say that Mr. Hourihan was Plessey's controller?

THE WITNESS: At that point Mr. Hourihan had been promoted to the position of controller by Mr. Albert. He was an ISL employee of the ISL which was owned by Plessey.

THE COURT: Hourihan came down with Plessey?

THE WITNESS: No, sir.

THE COURT: He did not?

THE WITNESS: He had been our chief accountant.

THE COURT: He had?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q But stayed on after the acquisition; is that right?

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A He stayed on and was promoted.

THE COURT: What is it about June? Were there any statements prepared with respect to the month of June?

MR. MC CONNELL: Yes, we have the June forecast, your Honor, but before we get to that, I also want to offer in Evidence Plaintiff's Exhibit 25.

MR. MALONEY: No objection, your Honor.

THE COURT: All right, received.

[Plaintiff's Exhibit 25 received in Evidence.]

Q Referring to, first, Plaintiff's Exhibit 22, what is the total gross sales shown on that Exhibit?

A 143,462.

Q That is for the month of May?

A Yes, sir.

Q What is the profit figure shown?

A $6,210.

Q Now, referring to Plaintiff's Exhibit 25, which is a report prepared by Mr. Hewitt under date of June 5, which shows copies going to Clark, Crocker and yourself, Kovar, what does that show for May forecasted sales?

A May forecasted 135,000.

Q And actual sales?

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A The net had been 143,462. His report shows 142 rounded.

MR. MALONEY: I would object to that, your Honor.

THE COURT: I don't follow it.

MR. MALONEY: He is saying that the figure on the net deliveries of 142,000 on Plaintiff's Exhibit 25 is a rounding by Mr. Hewitt of the gross sales of $143,462 on Plaintiff's Exhibit 22. Now, that is not a rounding. Somebody had two different figures, that is obvious.

THE COURT: I think so.

MR. MC CONNELL: The profit figure is the same, isn't it?

THE COURT: I don't think it makes too much difference.

MR. MALONEY: I object to that comment by counsel because I don't think any profit figure is shown on Plaintiff's Exhibit 25.

THE COURT: There is a written figure, I don't know where it came from, of the net deliveries, profit $6,210. Have you got that on yours?

MR. MC CONNELL: Yes.

MR. MALONEY: I don't think Mr. Hewitt put that on there.

THE COURT: I don't know.

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MR. MC CONNELL: Mr. Clarke put that on there and he has so testified on deposition. There is no dispute about that.

MR. MALONEY: The handwritten notations on Plaintiff's Exhibit 25 were added at a later time.

THE COURT: By Mr. Clarke?

MR. MALONEY: By Mr. Clarke.

THE COURT: I will allow that. That's all right. That agrees with Exhibit 22 anyway.

Q I am not sure whether we got this. You had forecasted sales of 135,000. What were your new sales, what were your net returned sales and what were the total sales?

A My recollection is that the actual new sales were about 132,000 and that the difference between returns and repairs were in our favor and that we had $110,000 more going back to the customer, which would have given us a gross of 143 plus.

MR. MALONEY: Your Honor, could I ask at this time that we have a definition from the witness on new sales?

THE COURT: I think the jury and I are getting rather confused by all this anyway.

MR. MALONEY: That is why I suggested it because

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I think it would be helpful.

MR. MC CONNELL: That is my term and it may have added confusion.

Q Can you explain it, Mr. Kovar?

THE COURT: Is anybody going to testify who is an accountant that can tell us the story about some of these things?

THE WITNESS: Your Honor, I don't think that is an accounting term, really.

MR. MALONEY: Mr. McConnell has Mr. Hourihan on his witness list so perhaps he can help us out when he comes and testifies.

THE COURT: I think I would rather handle it that way. I think I would allow the witness to indicate , as he figures, these sales of 143,000 and a profit of $6,210 for May. Is that correct?

THE WITNESS: Yes, sir.

THE COURT: All right. Let's start with that. Then, in June?

MR. MALONEY: I continue my objection to the accuracy of those figures.

THE COURT: The witness is saying what he thinks. You can put somebody on who says something different and the jury and I can consider that.

Q What sales were you forecasting for June?

A 210,000.

THE COURT: What was the basis for that?

THE WITNESS: On the basis of orders in hand, delivery requirements and arrearages.

THE COURT: Your forecast of June were sales of $210,000, right?

THE WITNESS: Yes, sir.

THE COURT: That is based on--

THE WITNESS: New sales --

THE COURT: What was the figure for new sales?

THE WITNESS: $210,000.

MR. MALONEY: Your Honor, I am getting a little confused.

THE COURT: I am trying to find out, Mr. Kovar, what was the basis of your June forecast of $210,000?

THE WITNESS: Yes, sir, it was on the basis of the orders that we had in hand and which were in production.

THE COURT: How many orders did you have in hand and how many did you have in production, if you remember?

THE WITNESS: We actually had orders amounting to two million some plus. What we had from those

orders were production schedules for completion and for delivery in the month of June.

THE COURT: What you are saying is this estimate was on the basis of your best recollection as to the orders in hand and the production schedules at the time; is that right?

THE WITNESS: Yes, and, as indicated on this exhibit, it was also Mr. Hewitt's forecast; yes, sir.

THE COURT: That is the basis of it?

THE WITNESS: That is correct.

THE COURT: You haven't got all those figures here, but this was how you figured this estimate of $210,000?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q Now, do you have an opinion as to the profits you could have earned on forecasted sales of $210,000 in June?

MR. MALONEY: Objection, your Honor.

THE COURT: I will let him express an opinion. I would like to know the basis of it, but I will let him express an opinion.

What do you think you would have done on $210,000 of sales?

THE WITNESS: Approximately $30,000.

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THE COURT: You think you would have done 30,000. Would you explain why that is?

THE WITNESS: Yes. On the basis of the volume of orders, knowing what the materials costs would be for those particular orders and estimating the labor costs for those orders and knowing what our overheads were at that time, it was estimated that it would be a $30,000 profit.

Q So that if your opinion is correct and if you had made profits of 30,000 --

THE COURT: You don't need to rehash it all. All we have is that Mr. Kovar estimated on this basis that he thought they would have a profit of $30,000 in June.

MR. MC CONNELL: Yes, but added to the main profit that had already been booked, that would be a total profit for the months --

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MR. MALONEY: I object to that.

MR. McCONNELL: Of 36,000.

THE COURT: He is just doing some addition. I don't know what good that does.

MR. MALONEY: All right, your Honor, I will withdraw the objection.

THE COURT: I guess the jury and I could agree that if you add 30,000 and 6,000 we would get 36,000. All right.

Q If the averaging provision under the contract means what your understanding is --

THE COURT: Let's not get into that too much. That is in the nature of a summation. He has told us what he thought the averaging meant. I don't think we have to go through that again.

Q I want to back up in time, Mr. Kovar. Did you have discussions with anyone from Plessey concerning farming out some work from Barbados to either Plessey's plant in Lisbon or Malta?

A Yes, I did.

Q With whom did you have those discussions?

THE COURT: When?

Q And when.

A They had taken place in April. I don't have

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a date in mind. They had taken place in Barbados with Mr. Peter Hewitt.

Q What was the discussion on that subject?

A Mr. Hewitt had been production manager of Plessey's Lisbon facility before he came to Barbados and he was at that time in April our production manager.

He indicated that we had a substantial arrearage on the orders for Hewlett Packard, one of our largest customers. By arrearage I meant that we were behind in our delivery schedule to them and he suggested that we send material to Lisbon and ask Lisbon to assemble the planes, which were used in the Hewlett Packard stacks, and we could catch up some of the backlog, some of the arrearage by having Lisbon complete these planes, which we would then stack, test and deliver to Hewlett Packard.

He said that he was sure that Lisbon would do this for us at cost and that their costs were substantially less than our overheads and on the order of 75 cents U.S. per hour compared to a figure which was probably closer to $1.75 on our part.

I asked him whether he thought Lisbon could perform it.

He said he had no doubt that they could and that economically, as well as efficiencywise, it would

be to our advantage.

I agreed.

In late April or May we did, in fact, send material to Lisbon with instructions to string planes for us.

Q Do you recall how the billing costs for that work done by Lisbon compared with your own actual cost?

MR. MALONEY: Objection, your Honor. I think the bills would be the best evidence of the cost, not Mr. Kovar's recollection.

THE COURT:I don't know that he's got the bills.

MR. MALONEY: He has had an opportunity to obtain the bills ,yourHonor.

MR. McCONNELL: We don't have the bills.

MR. MALONEY: I still maintain my objection, your Honor.

THE COURT: I think you are right. We should have some, rather than an estimate, I suppose that is a figure that can be ascertained.

MR. MALONEY: It certainly could, your Honor. We have the material --

Q Did anybody ever report --

MR. MALONEY: Mr. McConnell, excuse me. We have the material and would be glad to provide it to Mr.

McConnell. I don't know that we have it with us today, however, but we could provide it to him.

THE COURT: You provide it to him. That's fair enough. I think it ought to be on the basis of the bills.

Q After you were fired, what did you do?

A Well, immediately after I returned to Chicago and then I flew down to Barbados several days later, cleared out my desk and then flew back to the States again.

Q Did you subsequently return to Barbados?

A Yes. Then, when I came back by that time my son had recovered and my wife and son and I returned to Barbados.

Q When you returned to Barbados, did you attempt to --

THE COURT: Don't start leading. Ask him what he did when he returned to Barbados, if he can answer that.

Q What, if anything, did you do with respect to finding out what was going on with the Barbados facility after you came back to Barbados or returned?

A Well, I made contact with the staff members who remained at ISL to attempt to determine what was happening.

Q Did you ask for any information, financial

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information?

A Yes, I did. I asked Mr. Hourihan if I could have copies of the normal monthly reports that we had prepared in the past.

Q What did Mr. Hourihan say to you?

MR. MALONEY: Objection, your Honor.

THE COURT: Did you get the monthly reports?

THE WITNESS: No, sir.

THE COURT: Okay.

Q Approximately when was it that you talked to Mr. Hourihan, if you recall?

A Well, I spoke to him on several occasions while I remained down there. The initial time would have been somewhere toward the end of June.

MR. McCONNELL: If the Court please, I offer in evidence at this time Plaintiff's Exhibit 56, which is a telegram from Hourihan --

MR. MALONEY: Your Honor, I would object until I have had an opportunity to look at the exhibit.

THE COURT: What did you say this exhibit is?

MR. McCONNELL: 56.

THE COURT: All right, yes.

MR. MALONEY: I have no objection, your Honor.

THE COURT: It will be received.

eoh6 Kovar-direct

xx (Plaintiff's Exhibit 56 received in evidence.)

MR. McCONNELL: At this time I ask permission to read the exhibit to the jury, your Honor?

THE COURT: All right.

(Mr. McConnell read Plaintiff's Exhibit 56 to the jury.)

Q I show you what has been marked Plaintiff's Exhibit 13 and ask you if you can identify that?

MR. MALONEY: Excuse me, what exhibit is that?

b4 MR. McCONNELL: 13.

A This is a copy of the 1970 budget for ISL with thebackup documentation.

THE COURT: When was this prepared?

THE WITNESS: This would have been prepared in December of 1969.

THE COURT: Who prepared it?

THE WITNESS: Mr. Hourihan.

MR. MALONEY: Your Honor, I am not sure I have a copy of the whole exhibit.

THE COURT: This goes through to a schedule F, the copy he gave me.

MR. MALONEY: Your Honor, I am not sure that I have every piece --

THE COURT: Do you want to take mine?

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MR. MALONEY: I have no problem, but I would just like to reserve my objection until I can compare each page of Mr. McConnell's with my own. Perhaps after lunch --

THE COURT: It will be received on that basis. 13 will be received.

xx (Plaintiff's Exhibit 13 received in evidence.)

Q To your knowledge, Mr. Kovar, has that budget been provided to or given to the Plessey people?

A Yes, sir; it had.

Q Approximately when, if you know?

A It would have been probably in December or at the latest in January; December of 1969 or January of 1970.

MR. MALONEY: Could I inquire as to the basis of the witness' knowledge for his last statement?

THE COURT: Yes. Do you remember the circumstances of that? Do you have any recollection of that?

THE WITNESS: Yes. Mr. Hourihan was instructed to give this information to Mr. Albert.

MR. MALONEY: I would move to strike the witness' testimony, your Honor, on the ground that he, apparently, has no personal knowledge of when this document was given to the defendant.

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THE COURT: I will let it go. That is his belief that this was made available. If we find out it wasn't, we can strike it out.

MR. MALONEY: I don't think there is any question that we had it, but I don't think this witness is qualified as to the date on which we received it, which may be important at some point in the case.

THE COURT: All right, that is his best recollection of it.

Q Now, on that 1970 budget, what were the sales that you were projecting and what were the profits on those sales?

A Sales were 2,448,954.

THE COURT: That is for the year?

THE WITNESS: Yes, sir. With a net profit of $360,149.

Q Do you have an opinion as to the sales and profits that you could have earned during the measuring year had you been permitted to remain in management?

MR. MALONEY: Objection, your Honor.

THE COURT: I think I will sustain the objection.

MR. McCONNELL: Your Honor, I want to be heard on that.

THE COURT: Does that $360,000 figure appear

anywhere in connection with the contract?

THE WITNESS: That 360,000 figure is the basis for the earn-out, the pay-out formula that was finally proposed by Plessey.

THE COURT: That is what I thought. That is what I wanted to find out.

Your question is what?

MR. McCONNELL: I want Mr. Kovar's opinion as to the sales and profits he thinks the company could have made during the measuring year.

THE COURT: What do you want more than this? He has put in this document and he said he gave this to the defendant and this contains an estimate of profits for the year of 360,000 and that was the figure that he tells me was used in the contract.

Is that correct?

THE WITNESS: That is correct.

MR. McCONNELL: That is true, but actually the measuring year started April 1st.

THE COURT: I am not too worried about that. I think I will sustain the objection. I think that covers it.

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Q You previously testified you projected sales for $210,000 for the month of June. Do you know what the delivery period involved was?

A Yes, it was to be on a five-week month.

Q Do you know after take-over of management whether Plessey delivered on that five-week basis?

A They did not.

Q On what basis did they deliver?

A They cut back to four weeks.

MR. McCONNELL: Your Honor, would this be a good place to break?

THE COURT: I would rather not break now. I would be willing to take a five-minute recess now, and then I would like to break, say, quarter to 1 or ten to 1.

MR. McCONNELL: I would like a moment.

THE COURT: The jury and I will be very patient. We understand your problem. We will take a five-minute recess.

(Jury excused.)

MR. McCONNELL: Your Honor, I wanted to be heard on the question of Kovar giving an opinion, a present opinion as to profits for the measuring year.

THE COURT: No, not unless there is some other evidence introduced first on the subject. The witness

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an estimate of earnings for 1970 which he submitted to Plessey. I don't think it would be helpful at this point to have him give another estimate covering the same relative period in view of what has happened since.

(Reces.)

(In the robing room.)

THE COURT: Mr. McConnell, would it help you if I sent the jury out to lunch now?

MR. McCONNELL: I think it would be better.

MR. MALONEY: We have no objection.

THE COURT: I will be glad to do that.

I will ask the clerk to tell the jury that we have decided to take the luncheon recess and ask them to come back at quarter to 2.

MR. McCONNELL: Thank you very much. I appreciate that.

(Luncheon recess.)

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AFTERNOON SESSION

1:45 p.m.

(Jury in box.)

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A L L A N K O V A R, resumed.

MR. MC CONNELL: Your Honor, I have just a few tag ends here with Mr. Kovar, and I will be through my direct examination.

BY MR. MC CONNELL:

Q Mr. Kovar, what did you understand the Lisbon plant was going to charge ISL for the core planes that you had farmed out for the Hewlett-Packard account?

A My understanding was we would be charged approximately $16 a U. S. per plane.

Q Now, in addition to the core memory plane and other memory stack business, was the cable harness work that you were doing at Barbados to be part of the business from which profits were to be generated during the measuring year?

A Yes.

Q To your knowledge, was that business continued by Plessey?

A It was not.

Q And when, if you know, was that business

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discontinued?

A Immediately after my termination.

Q Now, at that time did you have a pilot order or pre-production order with any customer for cable harness work?

A We did.

Q Who was that?

A Honeywell.

Q Do you recall the amount of that order?

A Yes. The pilot order was for approximately $8,000 per month.

Q For how long was that to continue?

A It was orginally contemplated that that would be for the first six months of the year, January through June, of 1970. Honeywell was phasing out an entire plant in Massachusetts which produced all of its harness cable assemblies for all of the Honeywell operations in the country. They were closing that out. And the arrangement that we had worked out with them was that they were going to be transferring that work to us, as well as to a new facility that they were going to commence in Trinidad. They said that the 8,000 was the pilot order so we could get the idea of the type of cables they were doing, and it was to increase from that point on.

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Q Now, you testified earlier that your export - import agent was STC, but in turn, STC, Scientific Trading Corporation employed a brokerage house?

A Yes, sir.

THE COURT: Customs broker?

MR. MC CONNELL: Customers broker.

THE COURT: That is not the brokerage house that the jury and I are familiar with.

Q What was the name of that customs broker?

A Freight Brokers International, I believe.

Q Were Freight Brokers International services continued by Plessey, do you know?

A They were not.

Q Do you know when their services were terminated?

A This was shortly after my termination, probably it could have been within the first part of July, the middle of July, at the latest.

Q Do you know who was retained in replacement of Freight Brokers International?

A Another customs brokerage house. The name was Barnett, I believe.

Q Would that be Barnett-Priesley?

A I believe so, yes.

Q Now, did later learn of some difficulties

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experienced in connection with that changeover of brokers?

A I did.

Q What was the problem?

MR. MALONEY: I would object. Mr. Kovar couldn't possibly have any possible knowledge.

THE COURT: How did you find out about this problem?

THE WITNESS: I found out in two fashions. I found out from an attorney that we had originally hired to take care of customs matters and who was then kept on by Plessey, and I also found out from Mr. George White, who was an engineer, production engineer, United States citizen, whom we had originally hired and stayed on and was an employee of ISL at the time.

THE COURT: In Barbados?

THE WITNESS: Yes.

Q Where did you learn this from Mr. White?

A It was sometime in July, I believe.

Q What did Mr. White report to you on that subject?

A He reported that the --

MR. MALONEY: I am going to object at this time to any conversations with Mr. White.

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THE COURT: I don't want to hear the conversation. From these two contacts, what did you think happened?

THE WITNESS: That the relationship we had with Freight Brokers International and STL was terminated prior to any licenses being obtained by any other firm, and as a result Plessey did not have proper licenses to ship any material to Barbados, and that as a result there was a backlog of material piling up in New York, that Plessey tried to ship some of that material to its Brazil operation, having a license to ship Brazil with the intent of them getting it from Brazil up to Barbados, but that material was lost in transit.

Q Did Mr. White report to you for how long a period materials were held up because of their license problem?

A He did.

MR. MALONEY: Objection, your Honor.

THE COURT: I will let him answer that, not for the truth of it, but what he was told.

What did he say it was?

THE WITNESS: He said it was four to six weeks thereafter,

Q Now, you mentioned a Mr. Ron Keppel earlier

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in your testimony. Will you identify him again?

A Mr. Keppel was an electrical engineer whom we had originally hired to be our chief electrical engineer, and he stayed on after the sale of the company and after my termination.

Q For how long did Keppel stay on, do you know?

A I think it would have been sometime in September.

Q And then what happened to Keppel?

A Keppel was ordered to move to Boston to take over engineering at the Boston facility, become the chief engineer for the company.

MR. MALONEY: I object to this testimony.

THE COURT: It is hearsay, obviously.

Did he tell you that?

THE WITNESS: Yes, he told me he had been instructed by Mr. Clarke to be ready to move to Boston, that Clarke had terminated Mr. McNamara, and that Mr. Keppel was going to be their chief engineer for the memory operation. When he first told me this, he said that Clarke had talked to him two weeks earlier, but that he then heard nothing further about the move and was then waiting for further instruction. I subsequently heard from Mr. White --

MR. MALONEY: Objection, your Honor.

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THE COURT: I think we are going on a little.

MR. MC CONNELL: These are all agents for the defendant.

MR. MALONEY: These people are all available.

THE COURT: I am trying to help the jury and myself out on this, but I don't want to have these continuous hearsay conversations.

Did anybody tell you anything else in relation to this subject?

THE WITNESS: Yes, sir.

THE COURT: Who did?

THE WITNESS: Mr. White.

THE COURT: And when?

THE WITNESS: It would have been three or four weeks later; it would have been sometime in September.

THE COURT: And how did he tell you?

THE WITNESS: I met him at the airport in Barbados.

THE COURT: You saw him in the airport in Barbados?

THE WITNESS: Yes, sir.

THE COURT: What did he say to you at that time, again, not for the truth of it, but what he said.

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THE WITNESS: He told me that Keppel had quit or been terminated, he was not sure which.

Q Now, who was in charge of the Magnavox program?

A Mr. Keppel.

Q What was the Magnavox order?

A The Magnavox order was a military order for memory stacks.

THE COURT: What military? In Barbados?

THE WITNESS: This would have been ultimately for use by the United States Navy. It had to do with equipment that Magnavox had designed for submarine identification or location, specialized equipment that would be put in a jet plane. The equipment would, in effect, be a specialized computer tied to radar, and that the speed of a jet criss-crossing any particular area of the ocean, the equipment would scan and record anything that was seen by the equipment, and each piece of equipment had to have its own memory. That is what this memory stack was.

They had an order from the Government for something on the order of 2,400 or 3,000 of these units, Magnavox did.

Q While you were still there did you have any conversations with the Plessey people about building a

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test fixture for this Magnavox order?

A Yes, sir.

Q First of all, explain what a test fixture is.

A In order to electronically test a piece of memory equipment once it was produced, a special fixture would have to be designed that would hold and electrically connect to the memory stack. That fixture, obviously, had to be especially designed to fit the particular memory product involved, and we dealt with a company in the United States that designed and built those for us.

THE COURT: What company was that?

THE WITNESS: It was in Minneapolis, your Honor, and I can't remember the name of it. They charged something on the order of two or three thousand dollars per test fixture. Plessey engineers, who were in Barbados -- and this would have been in April, I believe -- told us that Plessey had such a facility of its own in England and that if we would send the drawings to England that they could produce the units faster and less expensively for us, and so we did so.

Q Were they able to produce that test fixture?

MR. MALONEY: Objection.

THE COURT: I will sustain the objection on that. All we have so far is they went to England.

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Q While you were still there did the completed test fixture come back?

MR. MALONEY: Objection.

A No, sir.

MR. MALONEY: There is no testimony that while Mr. Kovar was there he asked to have such a test fixture built.

THE COURT: Did you ask to have such a test fixture built while you were there?

THE WITNESS: Yes, sir.

THE COURT: Did you get it back while you were there?

THE WITNESS: No, sir.

THE COURT: Was any time schedule on it?

THE WITNESS: It was as soon as possible.

THE COURT: As soon as possible? It didn't happen while you were there?

THE WITNESS: That is correct. It was anticipated it would be three to four weeks, and when I had left in June it still had not appeared.

Q I show you what has been marked Plaintiff's Exhibit 32 and ask you if you can identify that?

A Yes, this is the copy of the letter dated September 10, 1971, from Mr. Sinsheimer to myself stating

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that --

Q No, before we get to that, I take it you received it on or about the date it bears?

A Within several days thereafter, yes.

MR. MC CONNELL: I offer Plaintiff's Exhibit 32 in Evidence without admitting the truth of anything that is contained therein.

MR. MALONEY: No objection.

*** [Exhibit 32 received in Evidence.]

MR. MC CONNELL: I will ask please to read it to the jury with the same reservation, to complete the story as to how we got in the courthouse. This is to Scientific. The date is September 10th, 1971.

[Mr. McConnell reads from Plaintiff's Exhibit 32 in Evidence to the jury.]

Q Did Mr. Sinsheimer enclose either of the Price Waterhouse statements referred to therein?

A He did not.

MR. MC CONNELL: That is all I have, your Honor, with the understanding that I reserve the right to recall Mr. Kovar.

THE COURT: All right.

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rgh 1 Kovar- cross

T2 THE COURT: Are you ready to go ahead?

MR. MALONEY: I am ready to go ahead, but perhaps we could recess because I would like to use the blackboard. I am going to start with some figures and I think it would be helpful for the court and the jury if we write some of them on the blackboard.

THE COURT: How long will it take you to raise the blackboard?

THE CLERK: Two minutes, Judge.

THE COURT: All right, why don't we raise the blackboard.

(Pause)

THE COURT: Will that be convenient for everybody to have it there?

MR. MALONEY: I think so, your Honor.

THE COURT: All right.

xx (Defendant's Exhibit BI marked for identification.)

CROSS EXAMINATION

BY MR. MALONEY:

Q Mr. Kovar, I show you Defendant's Exhibit BI and I ask you if you can identify that for us.

A It is a copy of a 1969 sales forecast for ISL dated October 16, 1968.

Q Do you know who prepared that document?

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A You are talking about the first page or--

Q Well, any part of it or the whole thing.

A Well, part of it would have been prepared by Mr. Hourihan and part of it would have been by myself.

Q Are the numbers given on the first sheet of that exhibit in United States dollars or in BWI dollars?

A EC dollars, Eastern Caribbean, which is the same as the BWI dollars, British West Indies.

Q For the convenience of the jury in answering questions, would you have any difficulty translating that into U.S. dollars for us?

A I don't think so.

Q With respect to that first sheet, was that prepared by Mr. Hourihan?

A Probably not. That part would have been prepared by myself.

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Q As of October, 1968, could you tell me the volume of sales you were projecting for 1969?

A Yes. It would have been approximately two million eight.

Q Two million --

A Two million eight hundred thousand.

Q Can you tell me what the gross profit would be that you --

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A Excuse me, two million nine.

THE COURT: I am a little confused and maybe the jury. That October, 1968, what does that refer to?

MR. MALONEY: That is the date on which this 1969 sales forecast was prepared, your Honor.

THE COURT: Why don't you write that so we will be clear, October, 1968, prepared, or something like that, so we won't get that confused. Would that be fair enough?

MR. MALONEY: Yes, sir.

Q What exhibit number is that, Mr. Kovar, BI?

A BI, yes.

Q Can you tell me what the gross profit after cost of sales was projected on that document?

THE COURT: For what period now?

MR. MALONEY: All of these figures are for the year 1969.

THE COURT: For the whole year 1969?

MR. MALONEY: Yes.

THE COURT: Fair enough.

A Excuse me, what was your question?

Q Could you tell me what the gross profit after cost of sales without alluding to fixed expenses was based on that projection?

A No, I could not.

Q There is no way to do that?

A No. This is strictly a sales forecast.

Q Could you look through that exhibit and see if there is any such budgeted profits which were prepared as part of that document? I think it's towards the end.

A Yes. Mr. Maloney, this is not one document, it is a combination of a number of different documents. You are referring to a page subsequently in this collection of documents which is entitled "Statement of profit and loss budget 1969."

Q Yes.

A And that on the basis of gross sales of two million nine, approximately, it shows a profit of 380,000--82,000, approximately.

Q Is that gross profit or the net profit of all expenses?

A Well, it's neither. It's a profit before any extraordinary expenses. It would be the normal operating profit.

Q So assuming no extraordinary expenses, that would be the company's operating profit based on that projection?

A Yes, sir.

MR. McCONNELL: Excuse me, did he say 392 or 382?

Q Did you say 382 or 392, Mr. Kovar?

A 382.

MR. McCONNELL: While we are erasing, I think he said two million nine--

THE COURT: I think he did, too.

MR. McCONNELL: On his recalculation.

THE COURT: I think that's right, yes.

xx (Defendant's Exhibit BH marked for identification.)

Q Mr. Kovar, I show you Defendant's Exhibit BH and I ask you if you can identify that document.

A From the writing I would say that it is a paper prepared by Mr. Hourihan which sets forth a 1969 budget for the memory division indicating that it was revised as of May 12, 1969.

Q Referring again to BI, which is the budget prepared in October, 1968, I think I asked you if you could find a gross profit before fixed expenses and I call your attention to a line entitled "gross profit" with some figures running across. Now, could you explain what profit that was?

A Well, that figure identified as gross profit is the figure that you have left after subtracting the actual material and labor costs of the goods sold which in our case would also include duty and freight.

Q Yes.

A But it's before any subtraction of your general expenses, your administration, your sales, your engineering expenses.

Q What would that gross profit figure be based upon the October, 1968, production?

A The October, 1968, sales forecast and the budget figure that you are referring to showed a gross profit of 855,000.

Q Could you explain to the jury how Mr. Hourihan had revised that by May, 1969? What was he projecting as gross sales for 1969 in the month of May, 1969?

A 1,568,000.

Q That's in United States dollars?

A Yes.

Q Is there a figure on there for gross profit which would be comparable to the gross profit he showed on the October, 1968, documents?

A I am afraid I can't tell you that. He has a gross profit figure on the 1968 budget. He has a standard gross profit figure on the May, 1969, revision. I don't know whether they include the same things or not.

Q By examining the documents, would you be able to tell us whether or not they did?

A No, sir. The 1969 document makes reference, and starts to show cost variances. What we were moving to was a standard cost procedure which would then include in the accounting results variances from those standards. So, when the 1969 document shows standard cost of sales and then standard gross profit, I am not sure just how he has utilized the variances.

Q So you think he was using the term gross profit by May, 1969, differently from the way he used it in October, 1968?

A No, I don't know. I can't say one way or the other.

Q Had anything happened in the way the business was operating that would change the factors that went into computing gross profit?

A No. As I explained, what changed was that we were moving towards a standard costs system in which you determine what your labor costs should be per hour and what your material cost should be per unit. That is your standard cost, then. The actual cost may be more or less, depending upon how much material you had to use or how efficient your labor utilization was, so you would have a plus or minus variance possible. Now, how these were recorded by him, in what fashion, I do not know. It may

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be that they are the same figures, but I can't tell that from the document.

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Q There is a figure at the bottom of the last column that says "Actual gross" --

THE COURT: Which exhibit is this?

MR. MALONEY: This is on Exhibit BH, your Honor, the May, 1969, revised budget.

Q It says, "Actual gross profit of $392,233." I ask you, Mr. Kovar, if that is not the comparable figure for the gross profit of $855,000 which Mr. Hourihan had projected in October, 1968?

A No, sir.

Q Do you have any way of telling from those documents what the operating profit would be based on the revised May, 1969, sales forecast?

A It may be, Mr. Maloney, that it is comparable. I can't --

Q You mean 392?

A 392 may be comparable to the 855, yes.

Q I will write it on the board with the reservations that you have expressed. That is 392,000?

A Yes.

THE COURT: Put a question mark on it because I think Mr. Kovar could be sure of that.

Q Referring to Defendant's Exhibit BI, the October, 1968, projection, what were the items which you mentioned which were subtracted from gross profit to give you an operating profit?

A General administrative expenses and marketing expenses.

Q Do you have any recollection of how your general administrative expenses and your marketing expenses would have changed from October, 1968, to May, 1969?

A Well, they would have -- how would they have changed?

Q Yes.

A Well, they would --

Q Perhaps we could make it easier. Would you explain to the jury what those expenses are; what did they include?

A Well, general and administrative expenses would include the salaries for administrative and office staff. They would include the expenses of the building, unless part of those were attributable to operating. They would include the supplies --

Q Office supplies?

A Non-manufacturing supplies.

Q Not materials that go into the product?

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A No, sir. They would include insurance costs. They would include interest costs on money and that type of thing.

Q Based upon your recollection, would the amounts of those expenses have varied from October, 1968, to May, 1969?

A To my recollection it probably did. In terms of exact figures, I am afraid I can't give you any recollection.

Q In what areas? Did you hire additional engineers?

A I would think that personnel records would show an increased number of administrative and executive personnel over the '68 period, yes. I would think that the financial records would show increased money costs, for example. I would assume that in the financial records of the companies are backups to Mr. Hourihan's conclusionary statements here in both cases that would identify those differences, or should be.

Q You are certain that they would not have decreased, then, I take it?

A I think that that's a good assumption, yes. I would make that assumption.

Q Well, then, is it correct that this gross profit in the May, 1969, forecast would have to be reduced by

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at least as much as the gross profit in October, 1968, was reduced by those fixed expenses to end up with this operating result?

A I don't know how I could possibly indicate to you any correlation -- mathematical correlation.

Q Isn't it simple arithmetic, Mr. Kovar?

A Hardly.

Q Could you tell me the difference between $855,000 and 382,000?

A 473 is it?

Q All right, 470 we'll take.

Now, you say those involved items of expense that you are sure did not decrease between October, 1968, and May, 1969. Therefore, at least this much expense would have to be subtracted from the profit of $392,000; is that not correct?

A All other items being equal, that's correct.

Q Could you tell me what kind of an operating result-- again leaving out extraordinary items -- you would have based on the May, 1969, sales forecast?

A Well, I can't tell you because -- unless all you want me to do is subtract one figure from another, but what I'm saying is that I don't know that there is a mathematical correlation between those two. I can

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subtract them for you and it would create a loss of $78,000.

Q $78,000.

Based upon the testimony you have given, with all of the reservations in that testimony, it would appear that when you and Mr. Hourihan sat down and prepared your sales and budget projections in October, 1968, for the 12 months of the calendar year 1969 you very optimistically projected a $382,000 project for that year; is that correct?

A That's correct.

Q But by May, 1969, your sales -- your projected sales for the 12-month period had been cut in half; is that correct?

A That's approximately correct, yes.

Q So instead of having a $382,000 profit by May, 1969, you were projecting a $78,000 loss?

A We were not projecting that, but that's the way it would work out mathematically. If that's what you implied, that's correct.

Q Can you recall what factors would account for this swing of approximately $450,000 from a projected profit to a projected loss?

THE COURT: The sales figure so differs, doesn't it?

MR. MALONEY: Yes, your Honor, but I would like Mr. Kovar to explain why in October, 1968, he thought that he would have $2,900,000 of sales for the calendar year 1969 when halfway into the year he discovered that they would probably only have $1,568,000.

THE COURT: You can ask him that. That's better.

MR. MALONEY: Yes, sir. That will be the question. I will withdraw the prior question.

A Well, our revised sales forecast were based upon what we knew five months into the year as to how well we were doing and what we were able to produce and what contracts we had in hand. The forecast -- the sales forecast for 1968 didn't have that information at hand, obviously.

Q In other words, in October, 1968, you could not tell exactly what contracts you were going to be able to obtain and perform during the 12 months of 1969, could you?

A That's correct. We did not have them at hand.

Q In May, 1969, you had a much better idea because you were substantially into the year; is that correct?

A Yes, sir.

Q But as a matter of fact, even the May, 1969, revised forecast proved to be incorrect by the end of 1969,

didn't it?

A That's correct.

Q Do you recall what the sales figure was for the year ended 1969?

A One million eighty-some thousand dollars, I believe. One million one, rounded, I guess.

xx (Defendant's Exhibit AZ marked for identification.)

Q Mr. Kovar, I show you Defendant's Exhibit AZ and I ask you if you can identify that document.

A Yes. This is the statement of Mr. Hourihan dated March 2, 1972, which he presented to Mr. Albert on

b4 that date, a copy of it.

Q Of course, that includes what the actual sales were and what the actual profit or loss was according to Mr. Hourihan's best information at the time?

A That's correct.

Q What were the actual sales?

A $1,082,910. $1,083,000.

Q What was the gross profit on Exhibit AZ?

A 36,000.

Q What was the net operating result?

A 399,000 net loss.

Q Loss.

Mr. Kovar, is it a fair statement that these

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figures demonstate that sales projections and budget forecasts are very difficult documents to prepare accurately?

A They are in fact. I don't know that those figures are evidence of that, but they are in fact difficult documents.

Q But you do agree that they are difficult.

So looking at your original projection back in October, 1968, and measuring that against your results at the end of the year, you had projected sales of approximately three times the amount of sales you were actually able to make; is that correct?

A That's correct.

Q With respect to projected profit and the actual loss, we have almost an $800,000 difference; is that correct?

A Whatever it adds up to. It's close to that.

Q Thank you.

What were the business conditions in the industry during 1969?

A What industry? The core memory industry?

Q In the industry in which you were competing.

A Well, I am going to have to define my term for you, Mr. Maloney. The industry in which we were competing would be the core memory industry. It was my understanding

the core memory industry was expanding -- it was growing.

Q Let me withdraw the question. I will try to ask it more narrowly.

During 1969, and referring to the customers with whom you were actually doing business; additional customers where you thought there was a good chance that you could obtain new contracts, was the demand for the products which you were producing increasing or decreasing during the calendar year 1969?

A It was our feeling that the demand was increasing.

Q So notwithstanding an increasing demand for the products, you still were able to capture and produce only one-third of the sales which you had projected for that year?

A We shipped two and a half times more than we had in the prior year, Mr. Maloney.

Q I don't think that was my question, Mr. Kovar.

A I didn't understand that you had a question.

Q Well, I will have the reporter read it back to you and if it's not clear I will rephrase it.

(Question read.)

A That's correct.

Q Now, on Exhibit BI, Mr. Kovar, I believe on the third and fourth pages -- that's the longer document.

On the fourth and fifth pages of this document as it's stapled together we have lists of various customers and sales forecasts- shipment figures. Now, midway down the third page we have an entry entitled "Magnavox" with a product description "4K x 32." Could you explain to the jury what that description would mean to someone in the industry?

A It's a reference to the size of the stack, how many cores there are in the stack. 4K refers to approximately 4,000 and the 32, being 32 planes of 4,000 each, so it would be 4,000 times 32 would be the total number of cores in that stack, approximately.

Q So that would be 32 planes stacked up like the pancakes you mentioned?

A Yes. The fact of the matter was I think that one had planes on either side, strung on either side of the planes, so that you actually had 16 planes with cores on both sides.

Q Now, below that it says, "8K x 32." I assume that that would have the same kind of numerical meaning?

A Yes, sir.

Q That the "K" means 1,096 cores?

A The "K" means approximately a thousand cores and the 8K would then be 8,000 cores.

Q Could you explain to the jury what the figures are running across the lines opposite these two products described called Magnavox?

A Across on the 4K x 32 sides is a figure of $450,000 under the title of "Realistic ISL share."

The next column has a "capture probability", indicating the writer's estimation that we have a fifty percent chance of getting that volume of business.

Therefore, on the basis of that fifty percent probability the next column shows a "bookings forecast" of $225,000.

Q If we could stop there for a minute. The

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column headed, "Realistic ISL Share" with a number in it, what did that mean to the marketing people and the budgeting people who were preparing these kind of projections?

A Well, it meant that out of the total order that Magnavox had for that particular product, it was a realistic estimate that we could get $450,000 of that total.

For example, if Magnavox needed $1,000,000 worth of our products, the writer's estimate was that we would get $450,000 of the total million or something less than a half.

Q Now, we have the number 50 under the heading, "Capture Probability." Could you explain what that number means to the jury?

A Yes. That is the writer's estimate of our odds of procuring that order. If the 450,000 represented the writer's estimate that Magnavox was going to divide the order up, it was going to divide it up so that there would be two suppliers, one would get 450,000 and the other would get some other amount.

He estimated that we had a fifty percent chance of getting the order for that 450,000 worth and, therefore, in putting down a figure for a sales forecast for us, he put down 225,000, which represented

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a 50/50 chance of getting the $450,000 order.

Q So, I take it when it goes down to the next line on the 8K x 32 and in the column "Bookings Forecast", we see "$420,000", that would also be the odd maker's estimate of how much total dollar volume we could get with respect to that product.

A Correct.

Q So, taking the potential Magnavox contracts together, whoever prepared this document felt that there was a substantial probability that we could obtain $645,000 in business from Magnavox; is that correct?

A No, what he said was that we had a 50/50 chance of getting $1,290,000 of Magnavox business and that, therefore, he was going to forecast half of that as our booking forecast, as our sales forecast.

Q Reading over to the last column, which is "Comments", the language appears:

"Both programs depended on ISL Difar prototype; both programs prototyping..." do you believe that would be Mr. Kovar?

A He is probably referring that the prototype should be in in November.

Q "In November, pre-prods February."

Now, could you explain that, to the jury?

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A Yes. I think what he was getting at was that if we received the order, it would be dependent upon a prototype being approved; that the prototype program should be completed in NOvember, which would lead, then, to pre-production starting in February.

Q Could you explain to the jury what pre-production is?

A It would be a small order which would vary in number depending upon the customer.

THE COURT: Really a sample?

THE WITNESS: No t really. It was more or less a facility checkout to see that you could consistently build because a number of companies had prototype facilities separate from their production facilities, a completion of a prototype and its being accepted by the customer didn't always mean they could build it as a production unit and so quite often a customer would say, you have built this in Boston, that doesn't mean Barbados can do it, so we will accept the prototype, but now we will only give you an order for a release or an order for, say, ten units and if Barbados builds those ten units, okay, then we will release the rest of the production order, 800 units or 500 or whatever.

Q Do you recall what the Difar prototype was

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that is referred to there?

A That referred to the 8K x 32 stack. That was the Difar program.

The smaller stack was the Magdar program.

Q Is the Difar prototype referred to here the same one that Mr. McConnell asked you about on your direct testimony?

A Yes, sir.

Q Were these sheets listing these customers also prepared -- withdrawn.

When was this projection prepared, can you tell us?

A It is dated 11/1/68 and it would have been prepared shortly before that, I would imagine.

Q Shortly before that. So when the writer on November 1968, when he makes the comments both prototypes should be ready in November, is he talking about November 1968 or NOvember 1969?

A I am really not sure from this document.

Q Could it take you an entire year to build a prototype?

A It could indeed.

Q Was this particular Difar prototype of Magnavox of that complexity?

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A It was a complex unit.

3/2 Q So that it could take twelve months to build it?

A Yes, indeed. I suspect that was because this other page of the document that you showed me shows no shipments to Magnavox during the first six months so I would assume that that is the case, Mr. Maloney.

Q Assuming that the prediction back here November 1968 had been correct and you had built the prototype in twelve months, the remainder of that column indicates that it would have taken from November to February, which is three or four months depending on including the whole month in each case, before Magnavox would even check out the facility to determine whether you were qualified to be given a production order; is that correct?

A I don't know what the time lag would be. This is the writer's estimate that production would start or the pre-production would start in February. Now, if it is going to start in February, it wouldn't be the end of it.

Q You mean his checking out of the facility wouldn't be even started until February?

A No, I don't mean that at all.

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Q I misunderstood you.

A The note indicated pre-production February and from that I take it he is estimating that the pre-production would commence in February.

Q That is the small number of units that you explained for his Honor.

A Yes, sir.

Q How long would it take to build a small number of units, say five units? How long would it take to build the five units?

A It would depend --

Q Of this particular prototype, 8K x 32 for Magnavox?

A It would depend on the number of people assigned to the task, Mr. Maloney. I don't know the standard hours involved in the unit.

Q Is that really all that is involved in one of these, the more people you put on one of these the faster you can do it?

A Surely. If you have 16 planes per stack, if you have one employee who makes all 16 planes, it is obviously going to take you much longer than if you have 16 employees each building one plane.

Q Once the plane is actually put together,

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is it then shipped right out to the customer?

A No, no, then it has to be stacked.

Q Then it is stacked and what do they do with it after it is stacked?

A In this case, after it is stacked, it would be, the planes themselves are tested. When the planes are stacked, then the stack is tested and then the stack is placed in a container, which has certain electrical connections to it.

Q How long does all of that take?

A Again, there is no way of giving you how long it takes.

Q With respect to this particular stack and based on your knowledge of the amount of work that would go into building that stack, can you estimate for us how much time it would take?

A No, sir, I can't. I just don't know the hours, the standard hours that were involved on that particular product.

Q Could you explain for the jury the amount of time involved in approaching a new customer for whom you have not built a product before, the amount of time that usually expires between that approach and the time when you actually begin to ship a production order of a large number of units?

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A It could be a matter of several months to more than a year.

Q Is there any way of telling ahead of time?

A For a particular order, certainly, but when calling upon a customer for the first time, there would be no way of knowing, one, whether you are going to get an order; two, for what; and, three, what it would entail in getting production ready for it.

Q Let's take a customer who has a need for a particular product and he asks you to prepare a quotation on the product. Now, what was the normal or average time it took while you were in charge of ISL to prepare such a quotation?

A Five to seven days.

Q And then you would submit that quotation to whom? Would you submit it to the customer or would you send the quotation to Mr. Crocker or one of the other sales representatives?

A It could happen in one of several different ways. If I were personally calling on the customer with the representative, we might get the quote to him the same day and it would be directly to the customer.

If it were done with me in Barbados, the quote would be given either to the rep directly with a

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copy directly to Mr. Tucker, the supervisor, or to Mr. Tucker and he, in turn, would relay it on to the rep.

Q Could you explain to the jury what is involved in preparing a quotation?

A Yes. We would in receiving a request for a quote, we would want to know the identification of the product, the type of core, the type of any additional electronics that would be required, whether any special test fixture would be required or any production fixtures required for its use, and, of course, the volume desired and a rough delivery schedule desired or required by the customer.

With that input we would determine hours, our standard labor cost, how much time it would take to produce each unit and also determine the material cost and the cost of any additional equipment or fixtures that would be required.

On the basis of that information, I would then calculate a pricing schedule, which would run from a prototype, if that were requested, on up to the top volume that was marked as potential and transfer that information, as I say, either to the customer, to Mr. Tucker or to the rep, as the case called for.

Q Was it a standard price or did the prices vary

in terms of the number of units that the customer ordered?

A The price varied according to the number of units and as to the other variable factors, which I listed for you. A 50 mil product, using cores which were 50 mil in diameter, would cost less than a core product using 18 mil because, one, 18 mil cores were much more expensive than 50 mil cores and, two, to string these much smaller cores would take more time and there was more scrap possible, so the cost, for the same number of units, would be appreciably higher.

Q Whatever went into computing the price, when you sent a quotation to a customer, you would give him different prices depending upon different quantities; is that correct?

A That is right, sir.

Q Did you sometimes experience difficulties with customers requesting prices on the basis of shipping a thousand units when they only intended to release in the first instance perhaps 50 or 100 units to you?

A Some buyers followed that practice, that is correct, some customers.

Q So, some of the customers would try to get you to agree to take the order at the price for the 1,000 units, but then would only release under that order

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50 units or 100 units at a time.

A Well, that is a different situation than the one you earlier described.

There were some buyers who would ask for a quote for 10,000 units and then, after you gave them that price, they'd say they wanted that price for an order of 1,000 units and you would then have a negotiation with them as to whether you could possibly give them the high volume price at the lower volume.

There was very little of the second situation in which the larger order was issued, but a very small release.

Q Would you explain the terms "released" and "unreleased" orders to the jury?

A Yes. In the case of certain customers an order would be given for, let's say, 1,000 units, but a delivery schedule only for the first 500 thereof and the thought would be that while you were producing the first 500 you would then get the delivery schedule, the release for the second 500 of the total order.

Q Was the customer obligated to release that second 500?

A Generally speaking, yes. You have the order for the full 1,000 and that is what he had ordered from

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you.

Q Now, if a customer gave you an order for, say, a thousand units and he released initially 200 units and you were experiencing difficulties in delivering the products on time or the customer was complaining about quality, would the customer, as a result of those problems, refuse to make further releases under the order to the company?

A Certainly, that is possible.

Q Wasn't that as a matter of fact a frequent problem?

A No.

Q Mr. Kovar, so we don't put everybody to sleep on Friday afternoon, let's turn our attention to the Data 100 loan.

Now, I believe this morning you testified that you were given notice by Data 100 in November 1969 that they were terminating the arrangement under which they had proposed to acquire ISL.

A Yes, sir.

Q Do you recall the exact date?

A My recollection is November 29, but I am not that positive.

MR. MALONEY: Mark this for Identification.

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[Defendant's Exhibit CS marked for Identification.]

Q Mr. Kovar, I show you defendant's exhibit CS and ask you if you if you can describe that to the jury?

A Yes, it is a letter, dated November 17th, 1969, addressed to me, from Mr. Osborne, who was president of Data 100.

Q Was that a demand by Data 100 that ISL repay the $200,000 which had been loaned to ISL by the bank and guaranteed by Data 100?

A I don't know how you would characterize the term "demand." He indicated in this letter that he proposed to recommend to his Board that any action necessary to effect recovery of the $200,000 loan be made, that they take that action.

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Q Do you recall under the agreement with Data 100 how much time you were given to repay that loan in the event that either party terminated the agreement?

A 30 or 60 days. I don't recall which.

THE COURT: You don't recall exactly?

THE WITNESS: No, sir.

THE COURT: Is this letter offered just to refresh recollection?

MR. MALONEY: Yes, I don't intend to offer it in evidence.

xx (Defendant's Exhibit CG marked for identification.)

Q Mr. Kovar, I show you Defendant's Exhibit CG and ask you if you can identify that document.

A Yes,this is a copy of the letter agreement between ISL and Data 100 relating to the purchase of ISL by Data 100, dated September 24, 1969.

Q Does that exhibit contain a provision providing for when the loan must be repaid if the agreement is terminated?

A Yes, sir.

Q What does it provide?

A 60 days after termination of negotiations.

Q Referring to Defendant's Exhibit CF, was that the termination of the agreement with Data 100?

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A I don't think it could be characterized as a termination itself. It was advice by him that he was so instructing or recommending to his board, so it probably would not be considered the official notice or termination.

Q Well, do you recall when you received the official termination?

A My recollection is that we received a subsequent letter. I don't recallthe date.

THE COURT: I think we will take our afternoon recess at this point, ladies and gentlemen. You are excused for a few minutes.

(Recess.)

MR. McCONNELL: Your Honor, this is Mr. Ira Berman, Mr. Blum's partner, who is sitting next to me.

xx (Defendant's Exhibit G marked for identification.)

BY MR. MALONEY:

Q Mr. Kovar, I believe you said that in addition to the two exhibits I showed you there was an additional letter from Data 100. I show you Defendant's Exhibit G for identification and ask you if that is the letter you are referring to.

A Yes.

MR. McCONNELL: What is the date of that?

THE WITNESS: That is dated February 4th.

Q Do you recall, Mr. Kovar, whether there was any correspondence with Data 100 between February 4th and November 17, 1969?

A Yes, there was.

Q Do you have a copy of that correspondence in your possession?

A I don't believe so.

MR. MALONEY: Mr. McConnell, would you have?

MR. McCONNELL: I have a letter dated December 3rd, which I think would be what is missing here.

MR. MALONEY: Will youmark this,please.

(Defendant's Exhibit CH marked for identification.)

xx

Q I show you, Mr. Kovar, Defendant's Exhibit CH for identification and ask you if that is the letter to which you just referred.

A Yes, sir.

MR. MALONEY: Your Honor, I offer it in evidence.

THE COURT: Any objection?

MR. McCONNELL: None, your Honor.

THE COURT: What is the date?

MR. McCONNELL: December 3, 1969.

xx

(Defendant's Exhibit CH received in evidence.)

Q Mr. Kovar, is Defendant's Exhibit CH the official

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notification from Data 100 terminating the agreement with ISL or the proposed agreement?

A That would be my opinion, yes.

Q Could you tell me the date by which ISL was obligated to repay the $200,000 based upon that formal termination?

A Within 60 days of December 1, 1969, according to this letter.

Q Can you tell the jury then what your last day to repay that loan was?

A It would have been at the end of January, 1970.

Q January 30th, January 31st?

A Yes.

Q What would be the consequences if ISL did not pay the $200,000 by that date?

A The consequences would be that Data 100 would have the right to take title to the stock that I, Mr. Johnson, and Mr. Van Bellingham had put up as security for the loan or the guarantee of the loan.

Q Had you repaid the loan by that date?

A No, sir.

Q Had you signed any agreement with Plessey Incorporated by that date?

A That date being the end of January?

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Q Yes.

A No, sir. That was signed February 4th.

Q So you were already in default on your obligation with Data 100 before any agreement with Plessey was signed? Is that correct?

A I'm not sure that I can so characterize it.

THE COURT: All that he is trying to say is that the 60 days had elapsed before you made any deal with Plessey?

THE WITNESS: That is, indeed, true.

Q Now, by January 31st had you discussed this situation with anyone at Plessey Incorporated?

A This situation, the Data 100 situation?

Q Yes.

A Yes, indeed.

Q Who had you discussed it with?

A Mr. Sinsheimer and Mr. Albert, probably just those two.

Q Do you recall whether or not you advised them that you would be in default under the agreement by January 31st?

A We advised them of the terms and of the facts of the situation. Again, I don't know if we said we were in default on January 30, 31; I don't know if we used

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that terminology, but we did advise them of all the facts.

Q Did Mr. Sinsheimer or Mr. Albert ask you when was the last day by which you could repay the $200,000?

A I don't recall that question being asked me.

Q Well, do you recall any discussion of that subject?

A Yes, sir. As I say, we discussed in full what the situation was with Data 100 and that we were under the guns to pay them back.

Q But you have no recollection of any more specific discussion than that?

A I don't remember the more specific words, other than the matter was discussed in full.

Q Did you show them any documents or correspondence relating to Data 100?

A I believe so. I believe they saw the correspondence, and I am positive they saw the documents themselves, the agreements.

Q How about the letter of December 3, 1969, Defendant's Exhibit CH, do you recall whether or not they had seen that letter?

A I can't say specifically. I think so,but I can't say specifically.

b2

MR. MALONEY: At this time I would like to also offer in evidence Defendant's Exhibit G, the letter from Data 100 dated February 4, 1970.

MR. McCONNELL: No objection.

THE COURT: It will be received.

xx

(Defendant's Exhibit G received in evidence.)

MR. MALONEY: I would like to read this letter to the jury, your Honor.

(Mr. Maloney reads Defendant's Exhibit G to the jury.)

Q Mr. Kovar, do you recall whether or not you showed Defendant's Exhibit G to anyone at Plessey Incorporated after you had received it?

A I believe I did.

Q Do you recall why Data 100 had given you the additional 30 days within which to repay the loan, since they could have taken the stock as of the end of January?

MR. McCONNELL: I object to that, as to what their legal rights may or may not have been.

THE COURT: I think I will sustain the objection to that question, but I will let him ask Mr. Kovar whether he had any conversations or letters with Data 100 asking for a n extension of time after January 30th or 31st.

THE WITNESS: I personally did not, your Honor,

but our attorneys were in communication with them.

THE COURT: And by attorneys --

THE WITNESS: Mr. Lewis and Mr. Shapiro.

THE COURT: They were in touch with them?

THE WITNESS: Yes.

Q Do you recall which attorney that would have been?

A I'm not sure. There were several conversations and it might have been both participated, one or the other.

Q Did you discuss the situation with Mr. Lewis and Mr. Shapiro before they got in touch with Data 100?

A Yes.

Q Do you have any recollection of the basis upon which they were going to request additional time within which to repay the loan?

A Yes, the basis was that we were in close agreement with Plessey and that on that basis their guarantee would be voided; Plessey would take it over.

Q Is it your recollection that Mr. Albert and Mr. Sinsheimer were kept advised of this situation?

A Yes, it is.

Q Mr. Kovar, I believe you testified on your direct testimony that at some point in December, 1969, Mr. Albert had asked you to send him certain financial

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information concerning ISL?

A That is correct.

Q Do you recall what it was that he asked you to send him?

A Yes, he wanted our latest audited statement, which would have been the 1968 statement, and he wanted whatever our most recent unaudited statements were.

Q Do you recall what that most recent unaudited statement was?

A It probably would have been October.

xx (Defendant's Exhibit A marked for identification.)

Q I show you Defendant's Exhibit A for identification, Mr. Kovar, and I ask you if you recognize those documents?

A Yes, this would have been the pro forma balance sheet as of October 31, 1969, and the statement of profit and loss as of October, end of October, 1969.

Q Could you tell the jury what the operating profit and loss for ISL was as of October 31, 1969?

A It showed a net loss of $151,000.

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Q Can you tell from those documents what the net worth of the company was at that time?

A Not really, because it's a pro forma balance sheet and assumed that our debentures were all converted to stock, and it also assumed that certain outstanding loands of the corporation were paid off. On the basis of those assumptions it showed a net worth of $62,000.

Q Those debentures that you referred to, were those the debentures you described on your direct testimony?

A Yes. Those were approximately $470,000 in debt of the company to the investors.

Q They were not to be included in any way in the transaction with Plessey Incorporated, were they?

A They were not to be assumed by Plessey, although one of -- initially when I had told Mr. Sinsheimer that we needed $600,000, I had been going under the assumption that our debenture holders would convert their debentures into stock. In order to do so we would have to pay them the difference between the stock value and the face value of the debenture, and that would cost the company something like $57,000. It would turn the $470,000 debt into equity, however. So, it would reduce the debt of the company by that amount. But it would include this additional cost --

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this expense of $57,000, and I explained to him that this was part of the $650,000 that I felt we needed.

Q Is that $57,000 reflected at all on this statement?

A Yes, sir, under liabilities and equity it shows a current liability of $57,339 as redemption of debenture cost, and that's what that referred to.

Q And that cost would have been part of the liabilities that Plessey would either be assuming or paying off out of the $600,000 to be contributed to the business?

A That was my original proposal to them, yes.

Q Other than that $57,000 there is nothing about the debentures which would have been of any interest to Mr. Sinsheimer?

A Yes. There would have been the interest then due. These were 8 per cent debentures which obligated the company to pay 8 per cent interest per year, and of course, there was the accumulated interest to date.

Q How did that interest accumulate? Did it become owing each month or every three months or every six months?

A It was a quarterly --

Q A quarterly interest?

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A Yes, and I think we were behind, however, in the payment.

Q Other than those two items, was there anything else about the debentures which would have any effect on the balance sheet of the company insofar as Mr. Sinsheimer was concerned in making a decision as to whether or not to acquire the company?

A I think not.

Q Now, you say that there was some debt that had to be paid off that was not reflected on this balance sheet?

A That's correct.

Q What debt was that?

A There was a debt to Canadian Imperial Bank in the amount of $325,000. Of that --

Q I think that's enough. We don't need any further description of it. I have no objection, but I just think--

A Well, that's not the full amount that's involved.

Q All right. Well, go ahead.

A Of that $325,000, the company in turn had loaned Mr. Johnson $288,000. So, the company had an asset of $288,000 being owing to it from Mr. Johnson and it had a liability of $325,000 to the bank, with a resulting $37,000 difference. That was the ultimate liability of

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the company, the difference between the two. This pro forma statement assumed that Canadian Imperial and Mr. Johnson's transactions would be washed out.

Q So I assume, then, that this statement would just carry the $37,000 item?

A That's correct.

Q So then with all of the items which have been excluded, this would present fairly the financial condition of the company insofar as Mr. Sinsheimer was interested in acquiring?

A I don't know what Mr. Sinsheimer's opinion would be, but this set forth information as we had it at the time, that's correct.

Q Was there any discussion between you and Mr. Sinsheimer concerning the financial condition of the company?

A Yes, indeed there was.

Q Did he ask you questions concerning the net asset value of the company?

A Yes, he did.

Q Did you explain the net asset value of the company to him?

A Yes. I indicated to him that on the basis of clearing out these two matters, that we thought that we

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would have a plus or a break-even situation, but that we had a problem of November and December where we knew we were going downhill, where we did not have the material, we did not meet our shipments, our costs were going up and we weren't getting income in. So, I said on said that basis there is no way I can tell you that we are going to have a break-even situation by the end of the year.

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[Defendant's Exhibit M marked for Identification.]

Q So there was a discussion of the company breaking even depending upon the results for November or December; is that correct?

A There was a discussion, as I esplained to you, of our financial situation, and I said with business going downhill that there was no way that I could forecast that we were going to break even as these figures indicated we were close to doing because of the deteriorating situation.

Q Do you recall the date of the discussion with Mr. Sinsheimer to which you are now referring?

A Yes. That would have been my first meeting with him on December 9, I believe it was, Mr. Maloney.

Q You didn't have a statement available for November at that time?

A No, sir.

Q Do you recall when the statement for the eleven months ended November 30, 1969 became available?

A Mid-December. The 14th, 15th, 16th, somewhere around there.

Q I show you Defendant's Exhibit M for Identification and I ask you if you can identify that

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RGR Kovar - cross

document.

A Yes, sir. This would be the November balance sheet, as of November 31, and a statement of profit and loss as of November of 1969 with a number of backup sheets.

Q Would this document have been made available to Plesey in connection with the negotiations?

A Yes, sir.

THE COURT: The question is was it?

THE WITNESS: Yes, sir.

THE COURT: Was. All right.

MR. MALONEY: Your Honor, I offere Exhibits A and M in Evidence.

MR. MC CONNELL: No objection.

THE COURT: All right, it will be received .

[Defendant's Exhibits A and M received in Evidence.]

Q Referring to those two statements, Mr. Kovar, can you tell the jury the change in the financial condition from October 31 to November 30, 1969 with respect to the operating profit or loss?

A Well, the net loss on the November statement increased to $169,000.

THE COURT: What was the loss for November?

THE WITNESS: For the month of November it shows $17,640.

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Q Can you tell from the November statement what the net worth of the company was at that point?

A Only on a proforma basis, because this balance sheet was drawn up under the same assumptions as the October statement.

Q Would those --

A And it shows 44,000.

Q With those assumptions it shows $44,000?

A That's right.

Q All right.

MR. MALONEY: Your Honor, at this time I would also offer in Evidence Defendant's Exhibit AZ, which is the year-end statement dated December 31, 1969 which was delivered by Mr. Hourihan at the closing.

THE COURT: All right, any objection to that?

MR. MC CONNELL: No.

THE COURT: All right, it will be received.

MR. MC CONNELL: May I see the letter?

THE COURT: Surely.

[Defendant's Exhibit AZ received in Evidence.]

Q Referring to the year-end statement which is attached to Mr. Hourihan's letter of March 2, 1970, could you tell the jury what the operating profit or loss

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for the year was on that statement?

A $399,353.

Q You have any recollection, Mr. Kovar, of what the company's operating loss was in the month of December 1969?

A No. We didn't make a statement for December of '69.

Q Do you have any recollection?

A I don't have any recollection. We did not make a record of it. We did not record the month of December as such.

Q Do you have any recollection of how the operating loss increased from November 30, 1969 from $169,000 to $399,000 one month later?

A Yes.

Q Could you explain that to the jury, please.

A Yes. The year-end statement included all write-offs for the year. For example, a piece of test equipment was determined to be of no further value to the company and it was written off. That was something like $20,000.

Q Is that the $20,000 of test equipment that's referred to in the agreement of February 4, 1970?

A Yes.

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Q All right.

A It was determined that a $15,000 reserve should be set aside for a possible non-payment by customers. That would not be properly attributable to December, but it would have been included in the year-end and and there had been no reserve set aside for that. There was, I believe, something like $32,000, approximately, that was written off as a result of a devaluation of Barbados money, and -- to try to explain, because we were a Barbados corporation, we had initially kept our books and records in Barbados money -- in Barbados currency, so our books always referred to the EC or BWI rather than the U.S. dollars. All of our dollars, or a substantial portion of them were purchased in the U. S. and our debts to our debenture holders were in the U. S. and in U. S. dollars so that when devaluation took place and the Barbados was worth less than it had been previously, we suffered a book or a paper loss because now we owed more BWI dollars than we had before. We still owed the same U. S. dollars to the customer and to our debenture holders, but now that would be more BWI dollars because the BWI dollar had been devaluated.

Q Can we stop there for a moment and could you tell us when this devaluation took place?

A I don't recall offhand. All I know is that

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approximately $32,000 was included -- according to my recollection, in the year-end statement for '69.

Q Do you recall whether there was some footnote for that?

A Yes, there was a footnote for that.

Q Could you tell me which note explains that?

A Number 13.

Q Number 13. Okay.

Now, what were the additional items?

A There was a change in the inventory -- methods of inventory valuation and that resulted in a write-off of $5,000 -- somewhere between five and six thousand. And there was the suggestion that I referred to earlier where Mr. Albert advised Mr. Hourihan that Plessey did not maintain a sales figure of total sales, but subtracted from it any returns that were inhouse at the end of the year. Now, we had previously recorded sales up through November of 1969 and had recorded sales each month without regard to any returns. We had done that by the basis that returns were not very significant in number and we generally turned them around the back to the customer with him 1 to 2 weeks' time. So, it was our conclusion that that was not a significant financial matter and

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whatever we had in the house at any particular time we did not consider to be a significant matter.

However, Mr. Albert said that the Plessey method was to deduct items that had been returned and that were in-house from the gross sales figure. And because we had an excessive -- a substantially larger number of returns at that point, we had in the order of, I think, somewhere between 100 or 150,000 reduced sales, or reduced income on our year-end statement.

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Q You are saying that you had $150,000 of returned merchandise which you didn't consider significant?

A I'm not sure that you were listening to me, Mr. Maloney.

Q Maybe I misunderstood.

A What I said was that we had not prior to that time made a separate recording of returned items because up to that time it had not been a significant item and because we generally turned these things around in one to two weeks' time, but that because at year-end of '69 we did have a substantial number of returns in-house which reflected amongst other things the problems we were having in getting materials and getting our production out properly --

THE COURT: These were returns, I take it,

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spread over the year?

THE WITNESS: These were returns which probably would have been received in the last two months.

THE COURT: The last two months, November and December?

THE WITNESS: That's correct, sir.

Q What was the dollar amount of those returns for November and December?

A I indicated I think they were somewhere between $100 and $150,000. Closer to the latter.

Q As I asked you before, you didn't consider the return of merchandise totally $150,000 signifcant?

A As I told you twice before, I did consider it significant.

Q All right.

Do you recall what your sales were in December?

A No, sir. As I say, we did not make a statement for the month of December. We were --

THE COURT: Well, if you took the year-end sales and the November sales, would that be a fair approximation or not?

THE WITNESS: No, sir, because as I say, the year-end had all of the changes in it which reflected

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these returns of things. And I don't know how many of the returns may have been attributable to an earlier December shipment or whether they were mostly November. I have no way of knowing that. Our shipments were way, way down. There is no question about that, but I do not have the number.

Q Do you recall when this $150,000 of returns came in, they came in in November and December?

A To the best of my recollection, the lions' share would have been November and December returns, yes, sir.

Q When had those goods been shipped to the customer?

A I have no way of knowing that, sir. You mean when they were originally shipped?

Q Yes.

A I wouldn't know.

Q Did I understand your testimony correctly before that you did not consider your return rate to be significant?

A It had not been prior to that time, that's correct.

Q Prior to what time?

A Prior to the end of 1969.

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Q November and December 1969?

A That's correct.

Q What percentage of your sales for 1969 was represented by these returns?

A Well, if the returns had been $100,000, it would be on the order of eight percent,nine percent.

Q Which would mean that one out of ten products was claimed to be defective by the customer?

A No. It would mean that one out of ten dollars shipped would have been involved in a defective product, but inasmuch as one product might cost $14 and another product might cost $2,000, I couldn't say that that was ten percent of the product by any means.

Q Do you recall which products you were having the problems with on the returns? Do you recall which customers?

A No. It would have been a record at the time of what was in the house. I wouldn't want to guess on it.

Q Could you tell me which footnote to the financial statement would describe this situation concerning returns?

A I am not sure that there is, but let me take a look.

The only reference would be in Paragraph 4c

where it indicates a method of valuing returns for customers. Read on its face, that would not be significant unless you knew that previously we hadn't included that.

Q So you couldn't tell just from reading the footnote, you would have to know additional facts?

A Yes.

Q Were there any additional items to the ones that you have already described that accounted for this increase in the year-end loss from $169,000 to $399,000 in one month?

A Well, let's see. What have I gotten so far? 32,000 in devaluation, $15,000 in payable reserves, so that's 45,000, 20,000 in test equipment, so that's 65,000.

Q Would it be helpful if I wrote these on the board?

A It would be helpful to me, yes.

[Pause.]

Q I will put them on the board and you can correct me if I am wrong, Mr. Kovar.

I think the first one we had was $20,000 of test equipment.

A Yes, sir.

Q You say that was written off in December?

A Yes, sir. As of December.

Q There was $15,000 reserve and there was the $32,000 devaluation in the currency.

A Yes, sir.

Q A $5,000 inventory write-off.

A Yes, sir.

Q Were you able to fix a figure for these credit returns?

A No. There is another $5,000 for customer material reserve that's noted in the footnotes.

Q Customer material reserves.

A And then there is $150,000 of returned items which is my estimate, and the difference between the November statement and that should be generally described.

Q $227,000?

A That's what it adds up to.

Q You seen those numbers, would you have any recollection of what your sales for December were, then?

A No, sir.

Q You still have no way of figuring it out?

A All I know is that the sales were substantially down.

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Q What was the net worth of the company on the basis of this statement?

A It shows a negative net worth of $595,000.

Q Excuse me, $595,000?

A I think so. You have an accumulated deficit at that point of one million one, but you have 600,000, or 570,000 of capital, so the difference represents your negative net worth at that point. You have got so much in capital, which is less than total expended and the difference is your net worth, so it's a negative net worth at that point.

Q Does that mean that the net worth of the company went from $44,000 on November 30, 1969 to a negative net worth of $600,000?

A No, because the net worth of the company in November of 1969 wasn't $44,000, that was a proforma net worth which included $470,000 as equity rather than $470,000 as a debt.

Q And that item is included in here?

A The $470,000 is included in the year-end statement as debt of the company.

Q Are you able to subtract that out and tell us what the comparable figure for the negative net worth would be?

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A If you subtracted $470 from $595, the year-end statement would indicate a negative net worth of $125,000.

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Q From $44,000 at the end of November?

A That's correct.

Q Do you have any recollection of which financial statements you discussed with Mr. Sinsheimer in December and January, 1970?

A Well, we didn't limit our discussion to a particul paper, Mr. Maloney, When all we had was the October, November statement, obviously that's all we discussed. In January, as we developed the final year end papers, which development Mr. Albert participated in, then it was obvious to Plessey, as it was to us, that our situation had deteriorated and continued to deteriorate rapidly.

Q Are you saying Mr. Albert participated in preparing your December 31st statement?

THE COURT: He didn't say that. He said he participated in discussions, as I understood his answer.

THE WITNESS: Yes, and he was in Barbados working with Mr. Hourihan as Mr. Hourihan developed the final papers and to that extent I could even say he participated in them.

THE COURT: All right.

Q Do you have any recollection of which of these items we have put on the board you personally discussed with Mr. Sinsheimer or with Mr. Albert?

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A Mr. Maloney, I would think that I discussed all of them at one point or another.

Q With both Mr. Sinsheimer and Mr. Albert?

A Probably more with Mr. Alpert because Mr. Sinsheimer, after the original offer was made, really didn't participate in the subsequent discussions at all.

T6 Q Referring to the discussion you had about your 1969 sales and budget projection, you recall you discussed certain items which represented direct cost of sales and you arrived at a gross profit, and then you deducted additional items and you come out with a net operating result?

A Yes.

Q Which of the items on the blackboard would be involved in your direct cost of sales which would be subtracted from sales to give you your gross profit?

A I am not sure that I am really capable of giving you that kind of answer where those particular figures would show up in a profit and loss statement but I suppose we could figure it out by reading the notes and see, but I'm not sure I could give you a reasonably accurate answer.

Q Was there an increase in cost of sales from November 30, 1969, to December 31st?

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A There was an increase of cost of sales between year end statement and that noted in November, '69, on the order of $47,000.

Q Well, taking the gross profit or loss on the November statement, what did you show as your gross profit after deducting the cost of sales?

A $216,000.

Q And on the December 31st statement did you show a gross profit?

A Yes, $36,000.

Q And that is a difference of $180,000?

A Yes, sir.

Q Could the difference of $180,000 be explained by those items on the blackboard?

A In part. If you pull over $150,000 of sales on the basis of returns, but you have all the costs that you had before, plus December costs, so that you meet yourself somewhere in the middle there.

In effect, what is happening at the year end shows approximately the same gross sales as the November statement, but the year end now includes all of the December expenses, plus all year end expenses that would be attributable to the cost of sales, and that apparently makes up the difference of $180,000.

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THE COURT: All right, gentlemen, I think we will adjourn now for the day. I have a number of matters Monday morning, early Monday morning. Come in at half past 10, instead of 10 o'clock, so I can handle those other matters.

We will adjourn now and meet at 10:30 promptly Monday morning.

I hope you all have a nice weekend and that the rain may stop.

Please don't discuss the case with anyone at all in the meantime.

(Adjourned to March 11, 1974, at 10:30 A.M.)

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SCIENTIFIC HOLDING COMPANY, LTD.
vs.
PLESSEY INCORPORATED

March 11, 1974,
10:30 A.M.

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(In open court; jury present.)

THE COURT: Good morning, ladies and gentlemen. Nice to see you this morning. Thank you very much for your promptness in attending.

As I recall it, when we recessed last Friday Mr. Maloney was crose-examining Mr. Kovar.

You may proceed.

MR. MALONEY: Thank you, your Honor.

A L L A N K O V A R, resumed.

CROSS EXAMINATION CONTINUED

BY MR. MALONEY:

Q Mr. Kovar, one thing I wasn't clear on on your direct testimony was how many trips did Milton Albert make to Barbados between December and February 4, 1970?

A At least two and possibly three, Mr. Maloney.

Q When was the first trip?

A The first trip would have been in mid-December.

Q When was the second trip?

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A The second -- two trips I remember directly would have been the mid-December and the second or third week of January.

Q The second or third week of January and what was the purpose of the second trip?

A It was a dual purpose. One purpose was to take care of the transaction of Plessey buying the home and the property that we had and the second purpose was to continue his inspection of the financial records with Mr. Hourihan.

Q When had you raised the question of purchasing the villa with Mr. Albert?

A I think, if not before, it was done at the breakfast meeting that I had with Mr. Albert, which, as I recall, was around the 9th of January.

Q How did the subject of the villa come up?

A I advised Mr. Alvert that I had a buyer for the property, the home and approximately ten acres, and that I had a buyer for $80,000 U.S. and wanted to go ahead and sell it because I needed the cash.

Q Do you recall who the buyer was?

A The buyer was a syndicate of individuals from New York City.

Q Do you recall who that included?

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A It included Mr. Van Bellingham and included, I believe, a Mr. McGuire and there were several others, I believe.

Q Mr. Van Bellingham is the same gentleman who was one of the directors of ISL at the time?

A That's correct.

Q Were you using any broker or attorney in connection with these negotiations?

A No, there were no negotiations. What I had was an offer and I decided inasmuch as it was more than we had purchased it for and we needed the cash, our board had approved it and I was telling Mr. Albert about it.

Q What did Mr. Albert say?

A At the time he didn't say anything, but subsequently he called me, while I was in Barbados, and advised me not to sell it; that Plessey wanted to buy it.

Q Do you recall when that was?

A I don't recall the exact date. It would have been some time the following week.

Q How much had ISL paid for the villa?

A Approximately 55,000 U.S.

MR. MALONEY: Mr. McConnell, do you have the original copies of Mr. Kovar's copies of the first two drafts of the contract? The reason for this, your Honor,

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is that the copies are very poor and there are a number of handwritten notations on them.

McCONNELL: I have his drafts, but they are Xeroxes, but I think you can make out the notations on them.

(Defendant's Exhibits J and K marked for identification.)

xx

Q Mr. Kovar, can you identify Defendant's Exhibits J and K for identification?

A The J exhibit would be the first draft, I believe, and the K would be the second draft.

Q With respect to the handwritten notations appearing on Defendant's Exhibit J, would all of those handwritten notations be yours?

A Yes, other than for the identity of the document as an exhibit.

Q Mr. Kovar, could you tell us what the handwritten notation in the upper right-hand corner of the first page says?

A Well, I think I can make out two of them.

One, the bottom word is, I believe, controls and has to do with who will control the management in my shorthand.

The one above that, I believe, is "purchase commitments." I think and related probably to contracts

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for purchase of course and I can't make out the first one and I don't now recall what it was.

MR. McCONNELL: It appears to be "legal fees" on mine, your Honor.

THE COURT: I think we'd better let the witness decide that. It is his writing.

THE WITNESS: Unfortunately, it doesn't show up on this copy that Mr. Maloney gave me. All I can see is that something was written, but I can't make it out.

THE COURT: I can't see it either. You think that last word is "control"?

THE WITNESS: Yes, sir.

MR. McCONNELL: That is why I called on Mr. McConnell. I think we will move along a lot more quickly if we have the original.

MR. McCONNELL: You are welcome to make working copies.

Q Mr. Kovar, do you recall that on March 1, 1973, I took your oral examination under oath at our offices in New York City?

A Yes. I don't recall the exact date, but that is true.

Q Do you recall that I asked you this question and you gave this answer--

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THE COURT: Have you got a page number?

MR. MALONEY: Page 52, your Honor.

Q "At the top of the first page of Defendant's Exhibit E, the first draft, there are some handwritten notations that I can't make out on my copy."

A That is my fine script. The first line I think says legal fees. The second is purchase commitments and the third is the word contracts.

Do you recall being asked that question and giving that answer?

A Yes.

Q Did I understand you to testify this morning that you think the word control also appears there?

A In looking at this copy I said to you I thought the third word was controls.

Q Does it now refresh your recollection that that word was contracts?

A Yes.

Q Do you recall who you discussed the first draft with?

A Mr. Lewis.

Q Do you recall having any discussion of this first draft with Mr. Dubin?

A Not after it was written; no, I do not.

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Q As I recall your testimony, there was a meeting in New York City on January 14th or 15th at which you and your attorneys discussed with Mr. Dubin and Mr. Albert the preparation of a draft contract?

A Correct.

Q I take it Defendant's Exhibit J is the draft which Mr. Dubin prepared?

A Yes, sir.

Q Between the time Mr. Dubin prepared the first draft and the time you received the second draft, which I believe you testified was on or about January 29th, did you have any discussions with Mr. Dubin concerning the written first draft of the contract, Defendant's Exhibit J?

A I do not believe so.

Q Other than Mr. Lewis, do you recall discussing it with anyone?

A I am sure I would have discussed it with Mr. Hourihan and --

Q How about Mr. Carlen?

A That is what I am trying to remember. I am really not sure.

Q Did ISL call a meeting of its board of directors to discuss the first draft?

A No, I don't believe so.

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Q Other than Mr. Carlen, do you recall discussing the first draft with any other director of the company?

A I didn't recall discussing it with Mr. Carlen specifically. I am really not sure. I went back down to Barbados and received this first draft in Barbados.

Q In the mail?

A In the mail and while I talked with Mr. Dubin on the phone prior to picking up the second draft, my recollection is that our conversation had to do with certain papers that he wanted sent up or wanted me to bring up, but did not relate to the contract language itself.

Q Is it your best recollection, as I sit here today, that the only person you discussed the first draft with is Mr. Lewis?

A No, as I say, I discussed it with Mr. Hourihan.

Q And Mr. Hourihan, excuse me.

A I may have discussed with with some of the other members of the board, but I frankly don't recall it specifically.

Q Now, if you would turn to page 2 of Defendant's Exhibit J, in the margin on page 2 the word "villa" is written. Now, do you recall why you made that notation?

A Yes, because I had wanted to and had indicated that we were going to sell the villa and that would not be

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in the ordinary course of business and so I wanted reference to that to be in the contract.

Q I see. Was it your understanding of the way paragraph 1 read in the first draft of the contract that that would have included the villa as part of the assets of ISL which Plessey was purchasing?

A That's correct.

Q Turning to page 3 of Defendant's Exhibit J, in the margin there is a handwritten notation which I believe says "interest to closing"; is that correct?

A Yes, sir.

Q Could you explain why you made that notation?

A Yes. I think, as I mentioned the other day, the company was behind in its payment of interest on the debentures and the draft, as Mr. Dubin had prepared it, indicated that Plessey was assuming no obligation with relationship to the debenture and this reference to interest to closing was we wanted Plessey to pay the interest to the date of closing, it being a liability of the company, the company ISL.

Q Did you ask Mr. Lewis to ask Mr. Dubin to include that in the next draft of the contract?

A Yes, sir.

Q Turning to page 5 of Defendant's Exhibit J,

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paragraph 5C, I believe that is the paragraph you testified to on your direct testimony covering the assignment of the agreements with the sales representatives to Plessey?

A Yes.

Q You wrote in the margin the word "No" next to that pargraph?

A That's correct.

Q That indicated your disagreement with the provision that Plessey would only be required to retain the sales representatives for six months?

A That's correct.

Q Turning to page 7 of Defendant's Exhibit J, paragraph 7, was there any closing date included in this first draft?

A There was not.

Q By the time of this first draft had there been any agreement as to what the closing date would be?

A I don't believe so, no.

Q Turning to page 10 of Defendant's Exhibit J, Mr. Kovar will -- well, we will have to back up to page 8 first. Paragraph 10 starts off "ISL represents and warrants." And then there are a number of subparagraphs and turning over to page 10, subparagraph E states: "Since

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December 31, 1969, there has not been." And then there is a parentheses with a little i in it and it states "Any change in ISL's financial condition, assets, liabilities or business other than changes in the ordinary course of business. Operating losses not in excess of dollar sign blank for the period from blank 1969 to the closing hereof shall not constitute an out of the ordinary change of ISL's condition."

What was your understanding of the purpose of that paragraph?

A Well, my understanding was that the only changes that would take place in financial condition would be those occurring in the normal operation of the business; that after we agreed to sell the business we wouldn't be selling off assets or taking other abnormal actions to the detriment of the business.

Q The second sentence says:

"Operating losses."

Now, would "operating losses" be affected by selling off assets?

A Well, as I mentioned to you, I am not an accountant. Operating income or losses has been used to refer to two things in my experience.

One, it is the operating income or loss that you

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and I talked about the other day, which relates to the cost, the direct cost of the goods sold.

What has been referred to in some cases as gross income is also in some cases referred to as operating income or in the event of a loss, operating loss or a gross loss.

Q That was the type of information that we put on the blackboard on Friday?

A Yes, sir, before administrative, marketing and that kind of thing.

Q Now, if you sold the villa, would that normally be included in calculating those kind of figures on whether or not you had an operating profit or loss on sales?

A I would think not.

Q It would not.

Do you know what a fixed asset is, Mr. Kovar?

A I believe so.

Q Would you explain to the jury what a fixed asset is?

A It would be a property, either real property or personal property of the company having a value to the company.

Q Now, in addition to profit and loss statements, ISL also kept a balance sheet, is that correct?

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A That's correct.

Q Does a fixed asset like the villa appear on the balance sheet?

A It should, yes.

Q As an asset?

A Yes.

Q Now, if you sold the villa at a profit, how would that affect the balance sheet?

A Well, the fixed asset figure would be deleted or would be reduced by the amount that was then on the books for the value of the villa. The liabilities side would be reduced by whatever mortgage payment was due.

The cash position, a current asset, I think would be the one that would be increased showing that the cash over and above the payment of the mortgage that you then had.

Q Was there a mortgage on the villa?

A Yes, sir.

Q Do you recall the amount of the mortgage?

A About $25,000 U.S.; I think.

THE COURT: The sale was subject to the mortgage?

THE WITNESS: Yes, sir.

THE COURT: The mortgage was not assumed; it was sold subject to the mortgage; is that right?

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THE WITNESS: No, the mortgage was paid off as part of the real estate transaction, part of the $80,000 went to pay off that mortgage.

Q So as a result, when Plessey gave you $80,000 for the villa -- withdrawn.

Did Plessey give you $80,000 for the villa?

A Yes, approximately. There were some fees and some stamp charges, which both sides had to pay, so that Plessey ended up paying a little more than 80,000 and ISL ended up receiving a little less than 80,000 because of the fees and stamp taxes involves.

Q Who paid the mortgage?

A Out of the 77,000 approximately that ISL received, the mortgage was then paid off.

Q So all you actually received at the end of the transaction was 77,000 less 25,000?

A Yes, if those figures are right. That is approximately true.

Q All of those transactions would be reflected on the balance sheet, is that correct?

A Yes.

Q They would not be reflected on the profit and loss statement?

A That's correct.

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Q It wouldn't have anything to do with how much money -- withdrawn.

It would have nothing to do with the amount of profit or loss you incurred in any particular month, would it, Mr. Kovar?

A Certainly not as an operating profit or loss, no. It would be an extraordinary income item, it would show up some place.

Q I notice next to that paragraph you have also writen the word "villa." I assume that is for the same reason as you explained on the earlier page?

A Yes, it says in the draft that since December 31, '69, there has not been any change in our financial condition, assets or liabilities. Obviously the selling of the villa would affect the assets and liabilities so I wanted to make sure that there was reference to that.

Q So you asked Mr. Lewis to make sure that this paragraph excluded any transaction concerning the villa so that that transaction could not have any effect on the determination under this paragraph?

A I think it was just the opposite. I asked him to make sure that it referred to it; that it was recognized that the parties knew that this villa was going to be sold.

Q In your discussions with Mr. Lewis concerning

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these changes, did Mr. Lewis ever indicate to you that Mr. Dubin was resisting making any of the changes that we have just discussed?

A Yes.

Q Which change was Mr. Dubin resisting?

A The primary one, I believe, had to do with the interest payment on debentures. To the extent, although we haven't gone into it, to the extent that the three notes on the front page indicated legal fees and purchase commitments and contracts or controls, as I thought, there was some question as to whether there was agreement there.

For example, there hadn't been agreement to my knowledge on legal fees.

Q Would you explain what the issue was with respect to legal fees?

A Yes. We had retained or hired Shapiro's law firm in Chicago to represent us in the negotiations with Data 100 as well as ongoing in the negotiation with the Plessey organization.

Q What was the name of Mr. Shapiro's firm?

A Sonenshine -- I am going to be confused here because I remember it as of the date of my graduation which goes back. I think it was Sonenshine, Levinson, Lautman and Morris.

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Q Mr. Lewis and Mr. Shapiro were partners in that firm?

A Yes, sir.

Q They were at the time of this transaction?

A Yes, sir. They had not submitted their statement and of course there was an ongoing representation so that the legal fees were growing. We also had local counsel in Barbados, a Mr. Silvester Hewitt, and we knew we were building up some legal fees.

Q You wanted Plessey to pay your legal fees incurred in the Data 100 transaction?

A Yes, we wanted them to recognize that this was one of the liabilities of ISL and we wanted them to pay it and even though we hadn't received the statements yet, we also wanted them to agree that these legal fees would not be charged against the profit earn-out formula.

Q You mean if the Sonenshine firm didn't send their bill until after the closing --

A Yes, sir.

Q And Plessey paid it after the closing, you didn't want that amount deducted from the profit that the business would make during the measuring year?

A That's right. It was a prior liability.

Q It was a liability that existed prior to the

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date of closing?

A Yes, sir.

Q You say the legal fees were also building up in connection with the Sonenshine firm's representation of you in your negotiations with Plessey?

A That's correct.

Q You wanted Plessey to pay those fees as well?

A That's correct.

Q And on the same basis as you have just described with respect to the Data 100 fees?

A Yes, sir.

Q Do you recall whether Mr. Plessey agreed to pay those fees?

A Ultimately they did.

Q On the basis that you have described without deducting or counting them against the profit during the measuring year?

A That's correct.

MR. MALONEY: Your Honor, I offer Defendant's Exhibit J in evidence with the handwritten comments which Mr. Kovar has discussed in his testimony.

MR. McCONNELL: No objection.

THE COURT: All right, it will be received.

(Defendant's Exhibit J received in evidence.)

xx

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Q Turning to the second draft of the agreement, Mr. Kovar, Defendant's Exhibit K for identification, do I recall your direct testimony correctly that you picked that up personally from Mr. Dubin on January 29th?

A The 29th or 30th, yes.

Q Between your receipt of the first draft of the contract, some time around January 16th, and January 29th, do you recall any conversations with Mr. Sinsheimer, Mr. Dubin or Mr. Albert that you have not already told us about?

A Between that period of time Mr. Albert would have been in Barbados and that was either a three or maybe a four-day trip and we had a lot of conversations inasmuch as I spent a good deal of time with him.

Q How about Mr. Sinsheimer?

A I don't believe so.

Q Again, on Defendant's Exhibit K we have a number of handwritten notations. In the upper right-hand corner it has the initials "EAK copy." Does that indicate that this was your personal copy of the draft?

A That's correct.

Q Underneath that it says "30 January 1970."

A That's correct.

Q Turning to the handwritten comments on the left-hand side, could you read the comments at the top of

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the page?

A There has been some erasure on the very top of this copy that I have and I can't tell. There are several words up there that I can't see on this copy.

I can read it from where numerical 1 is noted, but I don't see what is above that.

Q When you say some erasure has been made, did you mean some erasure had been made before or after this document was marked at your oral examination?

A I haven't the faintest idea of when it was done. It may be that it is just this copy, I can't tell.

MR. MALONEY: Mr. McConnell, could I see your copy to see if it is any clearer.

Q Does that refresh your recollection that what happened at the top was "Julius Lewis comments"?

A Yes, sir.

Q What did that mean?

A After I had picked up this copy from Mr. Dubin and read the contract through, I called Mr. Lewis and was writing his comments in the margin on the left as I was talking to him over the phone.

Q I would like to just back up for one moment, Mr. Kovar. Did you have any discussions with Julius Lewis between January 16th and January 30th concerning the issue

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of management control of the business?

A Yes, indeed.

Q Would you tell us what the substance of those discussions were?

A The substance was that as long as the payout was in large part a continuing went on, that I wanted the contract to reflect that we had the rig t to remain in management during that earn-out period.

Q Did you discuss a specific provision with Julius Lewis?

A No, sir. You mean the specific language?

Q The specific language.

A No, I did not.

Q Did you tell him the substance of the provision that you would want included in the contract?

A The substance of it was that we wanted to retain the right to manage during the earn-out period.

Q For the entire year?

A Yes, sir.

Q Was there any discussion of some compromise with Plessey, since Plessey was resisting allowing you to remain in management for the entire year?

A Not during this period, no.

Q So there was no discussion of that provision

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between January 16th and January 30th to your knowledge?

THE COURT: I don't know what that question means?

MR. MALONEY: I will withdraw it.

THE COURT: I take it there was a discussion of the provision.

MR. MALONEY: Withdrawn.

Q Was there any discussion between January 16th and January 30th of a provision which would allow you to remain in management control so long as you were able to achieve certain profit levels within a certain number of months?

A I would think so, yes.

Q Do you recall who you discussed that with?

A It would have been with Mr. Lewis.

Q Did you discuss it with Mr. Dubin?

A No, sir.

Q Did you discuss it with Mr. Sinsheimer?

A I don't believe so, no.

Q Did you discuss it with Mr. Carlen?

A I am not sure whether I did or whether Mr. Lewis did. When you refer specifically to Mr. Carlen, the discussion would have taken place, I think, with several members of the board, not just Mr. Carlen.

Q Do you recall whether you personally discussed it

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with Mr. Carlen?

A I do not recall any such conversation.

Q Now, in connection with the discussion of such a provision, did you suggest language to Julius Lewis that should be included in the contract?

A I did not.

Q You did not?

A I did not.

Q Did you explain to Mr. Lewis what kind of a compromise you would accept?

A No, I did not.

Q As of January 16th it was Plessey's position that they would take over management control, is that correct?

A Yes, sir.

Q As of that date it was your position that you should continue in management control for the entire year?

A That's correct.

Q Now, you recall that there was some discussion with Julius Lewis of a provision that would fall somewhere in between those two extremes, is that correct?

A That's correct.

Q What did you tell Mr. Lewis that compromise would be?

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A I didn't tell him what the compromise would be. That is what I am trying to explain to you, Mr. Maloney.

What I wanted and what I told Mr. Lewis that I wanted was the right to retain management and I was not discussing compromises with him as to how far he could go in compromising the issue.

Now, the conversations that took place, and I don't recall these exact conversations, but would have been on the order of what he thought he might be able to negotiate with them on the basis of his conversations with Mr. Dubin.

Q Between January 16th and January 30th do you recall Mr. Lewis reporting back to you concerning any discussions he had with Mr. Dubin?

A As I say, I think there were some phone conversations between me and Mr. Lewis and that would have included that type of discussion, but I don't remember the specific conversations.

Q Could you tell us, going back to Defendant's Exhibit K, could you tell us what the handwritten comments numbered 1 is on page 1?

A Yes. It is "take back management." Are the first three words and has to do with this subject of management control during the earn-out year.

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Q Excuse me, Mr. Kovar, I will give you an opportunity to explain, but to make the record clear, would you just read what is written on the contract first?

A Yes. Then there is the word in quotation marks "averaging" and then "so long as no three-month loss continues."

Q Now, did I understand you that that was a comment that Julius Lewis made to you?

A Yes, it was a comment that Mr. Lewis told me that he thought he had agreement from Dubin and Albert to that amendment of this second draft. The second draft called for a take back provision that provided that we would manage during the earn-out year provided that we didn't have a loss of $15,000 or more in any month and Mr. Lewis was telling me over the phone that he thought he had agreement with Mr. Dubin and Mr. Albert to an averaging provision, which he had been pushing for, he, Mr. Lewis.

Q Mr. Kovar, you said so long as you didn't have a loss of $15,000 per month, is that what you meant to say?

A Yes, isn't that what I said? Oh, excuse me, that is not right. I am reversing it.

Q Would you like to correct your answer?

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A Yes, the wording was on page 6 and notwithstanding the foregoing, which referred to our right to manage, if ISL profits are not at least $15,000 U.S. per month in any full month commencing with the third calendar month, and then it goes on to say that then Plessey will take over.

Q So that handwritten comment on page 1 was with respect to the provision on page 6 of Defendant's Exhibit K?

A Yes, sir.

Q Could you read the handwritten comment numbered 2?

A Yes. It says "Letter re Bank of England cannot be in writing says Milton."

Q Going about halfway down the column, I see a handwritten notation "Not in agreement" with an arrow and "attorney's fees." Would that mean that the question of whether or not Plessey would agree to pay the attorney's fees was still open at this point?

A That's correct.

Q That would be January 30th?

A Correct.

Q Do you recall when it was that Plessey agreed to pay those attorney's fees, Mr. Kovar?

A I think it was February 2nd.

Q Turning to page 3 of Defendant's Exhibit K for

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identification, we again have a handwritten notation "interest to closing."

A Correct.

Q I take it Plessey had still not yet agreed to assume any liability for interest on the debentures as of January 30th?

A It was not clear from that language, that is true.

Q Was there an agreement by January 30th that Plessey would assume that liability?

A I had a question as to whether there was at that point because of the language.

Q Leaving the language aside for a moment, do you recall whether or not Plessey had agreed to make the payment?

A I don't recall being so told, no, and from the language I couldn't tell.

Q You had no way of telling other than what appeared in paragraph 2 of the contract?

A That's correct.

Q Taking both Exhibits J and K, Mr. Kovar, on the bottom of page 2 of Defendant's Exhibit K -- withdrawn.

What did you understand the purpose of paragraph 2 to be, Mr. Kovar?

A Well, I believe that it set forth the promise

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of Plessey to make the down payment of $180,000 and the promise of Plessey to deliver to us, ISL, a written promise to assume all debts, obligations and liabilities of the company as of December 31st plus those that were incurred in the ordinary course of business thereafter to the date of closing.

Q So any additional liabilities that you didn't have on December 31st, which had arisen by the date of the closing, Plessey would be obligated to assume those liabilities as well?

A Yes, those which were reflected as of December 31 on our balance sheet.

Q Turning to page 5 of Defendant's Exhibit K, had paragraph 5C been changed since the first draft?

A Yes, the period of time in which, in the first paragraph it said Plessey could terminate our sales reps any time after six months and this extended that to the full measuring year.

Q By January 30th Plessey had agreed to continue the sales reps for the entire measuring year?

A Yes, sir.

Q Do you recall, Mr. Kovar, whether by January 30th there had been any agreement on a closing date?

A I am not sure that a date was set.

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Q Referring to page 9 of Defendant's Exhibit K, it is correct that there is no closing date yet entered in paragraph 7?

A That's correct, it is still left blank.

Q Again, turning to paragraph 10E, paragraph 10 still reads "ISL represents and warrants" and turning over to page 12, were any changes made in that paragraph E from the first draft?

A Yes, it started off with the language that it had before, that there had not been any change in ISL's financial condition, but then specifically noted that the sale of the property, which has been the residence of E. Allan Kovar, and the writing off of approximately 20,000 U.S. of testing equipment was added.

Q In the morttage there is a handwritten comment, Julius $20,000/MO. Could you explain what that meant?

A Yes, there was a further statement in both the first draft and the second draft indicating that operating losses not in excess of blank, shall not constitute an out of the ordinary change of ISL's condition and in my phone conversation with Julius, which took place on the 30th of January, he asked me whether a $20,000 a month figure was a reasonable one and I said I thought it was.

Q So you agreed that $20,000 would be inserted in

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that blank space?

A Yes, $20,000 per month.

Q Did you understand what the effect of that paragraph would be if ISL had operating losses in excess of $20,000 a month for January and February or any other month prior to closing?

A No, sir.

Q You didn't understand the effect of that paragraph?

A No, sir.

Q You were relying exclusively on Mr. Lewis to determine whether or not there should be such a paragraph in the agreement?

A Well, the question didn't come up as to whether should should or shouldn't be. To the extent that I was relying upon my counsel in working out the language, I will have to answer your question yes, I was relying upon him.

Q Did you ever ask Mr. Lewis why that paragraph was included in the agreement?

A Not prior to the institution of this suit.

Q You mean when this lawsuit started was the first time you understood what the purpose of paragraph 10E was?

A That is the first time I raised the question as to what it meant. I am still not sure that I know what it means.

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rmp1 Kovar-cross

T2 Q Did you ask Mr. Lewis to have any further changes made in that paragraph before it went into the final agreement?

A Not that I recall, other than possibly the spelling of my name.

MR. MALONEY: Your Honor, at this time I would offer Defendant's Exhibit K in evidence with the handwritten comments which Mr. Kovar has discussed.

MR. McCONNELL: No objection.

xx (Defendant's Exhibit K for identification received in evidence.)

Q Turning to page 5 of the agreement, paragraph 5-D, is that the provision concerning who would manage the business during the measuring year?

A Yes, sir.

Q Do you know who prepared that language?

A Yes. It has been my understanding all along that Mr. Dubin prepared all of that language.

Q Did Mr. Dubin ever tell you he prepared the language appearing in paragraph 5-D in Defendant's Exhibit K?

A No. He gave me paragraph 5-D along with the whole contract which he had prepared at his office.

xxx (Defendant's Exhibits P and B marked for identification.)

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rmp2 Kovar-cross

THE COURT: Which is which?

MR. MALONEY: The telegram from Seth to Warren Sinsheimer is Defendant's Exhibit P for identification, and the Telex from Sinsheimer to Dubin is Defendant's Exhibit B for identification.

Q I ask you, Mr. Kovar, if you have ever seen Defendant's Exhibit P before?

A Yes.

Q What is Defendant's Exhibit P?

A That is a copy of a -- I don't know whether it is a Telex or a cablegram -- to Mr. Sinsheimer from Mr. Dubin, dated January 27, 1970.

Q Do you recall when is the first time that you saw this Telex?

A It would have been some time after the filing of the suit.

Q You have no recollection of seeing this Telex back in 1970?

MR. McCONNELL: Excuse me. Your Honor, I thought Defendant's Exhibit P was the cable from Dubin to Sinsheimer?

THE COURT: Isn't that what he is talking about?

MR. MALONEY: I think it is.

THE WITNESS: Yes.

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rmp3 Kovar-cross

MR. McCONNELL: I think the witness just said from Sinsheimer to Dubin.

THE WITNESS: If I did, I reversed it.

MR. McCONNELL: This is the first Telex, then?

THE COURT: That is Exhibit P.

MR. MALONEY: Dated January 27, from Dubin to Sinsheimer.

THE COURT: Okay.

Q It begins, "Julius Lewis suggests the following: The present management of ISL shall operate the business during the measuring period and shall have the maximum freedom to operate such business in a manner which will produce in the judgment of such management the maximum profit available consistent, however, with the overall policies of Plessey as established by its directors. Should Plessey propose any course of action which would in the opinion of management of ISL be detrimentalto profits during the measuring year, ISL management shall have the option of requiring prior to the commencement of such course of action that the expenditures involved in pursuing such course be excluded from the determination of profits. Notwithstanding the foregoing, if ISL profits do not average $15,000 per month commencing with the third full calendar month after closing, this sub-

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paragraph shall no longer apply and Plessey shall have the right to assume full management responsibilities. In such event, however, Plessey shall be obligated to continue the business of ISL during the measuring year in such a manner as in Plessey's judgment exercised in good faith will maximize the profits for the measuring year."

Do you have any personal knowledge, Mr. Kovar, of whether or not Julius Lewis actually gave Mr. Dubin the language which appears in Defendant's Exhibit P?

A I have been told that he did.

Q He did?

A That's correct.

Q So that was Julius Lewis's language that appears in this Telex?

A That is my present understanding, yes.

MR. MALONEY: Your Honor, I offer Defendant's Exhibit P in evidence.

THE COURT: Any objection.

MR. McCONNELL: No objection. It is the same as our Exhibit 6.

MR. MALONEY: Is Plaintiff's Exhibit 6 in evidence already? I wouldn't want to clutter the record with additional exhibits.

MR. McCONNELL: No. It has not been offered

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yet, but I will be happy to offer it.

THE COURT: Well, let's not waste time.

xx (Defendant's Exhibit P for identification received in evidence.)

Q Taking Defendant's Exhibit B for identification, Mr. Kovar, could you tell the jury what that document is?

A This is a copy of a cablegram to Mr. Dubin from Mr. Sinsheimer, dated, I believe, the 28th of January, 1970.

Q Do you recall when you saw this document for the first time?

A Both of them at the same time. It would have been after this litigation was commenced.

MR. MALONEY: I would like to read this document, too, your Honor.

MR. McCONNELL: Why don't we have it in evidence. It is the same as our Plaintiff's Exhibit 7.

THE COURT: All right, it will be received.

xx (Defendant's Exhibit B for identification received in evidence.)

Q "Would prefer following language" -- there are handwritten additions to this document and I will just read the typed version first.

"The present management of ISL shall operate the business during the measuring year and shall have the

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maximum freedom to operate the business in a manner which will produce in the judgment of such management the maximum profit available, provided, however, that any policy directive issued by the directors of Plessey shall" --

Can you tell me --

THE COURT: "Have been."

Q "shall have been complied with."

Comparing Defendant's Exhibits P and B, did Mr. Sinsheimer make any change in that first sentence of the proposed paragraph 5-D?

MR. McCONNELL: Could I have that question read back, please?

THE COURT: Yes. What are we doing here? Are we going to sit around spending the day having the witness check all these changes? The changes are pretty obvious, aren't they? You want him to read the first sentence in these two things and point out the differences?

MR. MALONEY: I think the differences between the two provisions are important. We don't have to read them if Mr. Kovar can tell us what the differences were.

A Well, there are some differences, Mr. Maloney. The Lewis suggestion indicates that the opportunity or the right of ISL management to operate for maximum profit and then says, "Consistent, however, with the overall policies

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of Plessey as established by its directors," and Mr. Sinsheimer said, "Provided, however, that any policy directives issued by the directors of Plessey shall have been complied with."

One says that ISL shall manage consistent with, and the other, the Sinsheimer, "You have to comply with them." So there is some difference there.

Q Skipping down to the third sentence, is there any difference between the third sentence of Julius Lewis's language and Sinsheimer's language?

A You want to tell me what the third sentence is, in your estimation? What draft are you referring to?

Q Defendant's Exhibit B, "Not withstanding" --

THE COURT: I think this is wasting a colossal amount of time. I think if you want to read these two sentences from these documents and ask the witness if there is any change and what they are, you can do that. I think that we are wasting time having him comb these things and having to read them.

These are in evidence and if you want to read the two sentences and ask him whether he knows anything about the differences, you can do that.

Q I hand you a copy of Plaintiff's Exhibit 3 in evidence and I ask you to turn to paragraph 5-D. Can

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you tell me whether or not the language appearing on Sinsheimer's Telex Defendant's Exhibit B, along with the handwritten changes, is the same language which appears in the second draft of the contract, Defendant's Exhibit K?

MR. McCONNELL: Your Honor, I think we could shorten this up. I am prepared to stipulate, because we have the second draft with the Sinsheimer Telex, and the language is identical --

THE COURT: All right, good.

MR. McCONNELL: So that the Sinsheimer draft then becomes the language in 5-D under the second draft of the contract.

THE COURT: All right.